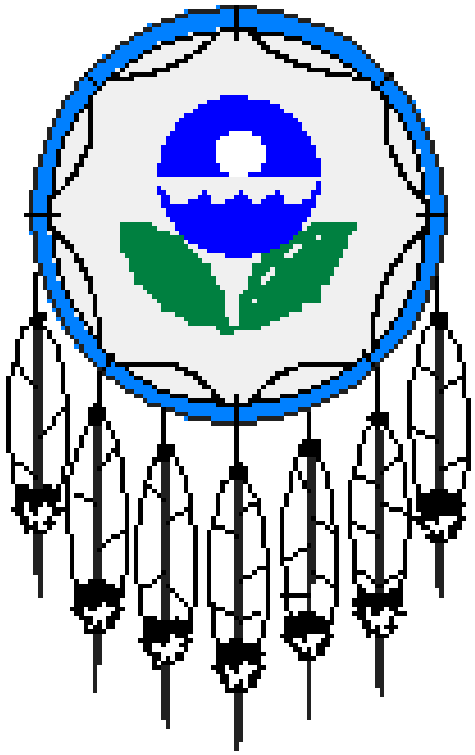
U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 6
FOURTH ANNUAL
TRIBAL ENVIRONMENTAL SUMMIT
MEETING SUMMARY



Dallas, Texas
October 18 and 19, 2000

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U.S. ENVIRONMENTAL PROTECTION AGENCY REGION 6
FOURTH ANNUAL TRIBAL ENVIRONMENTAL SUMMIT
SUMMARY

The U.S. Environmental Protection Agency (EPA) Region 6 held its fourth annual Tribal Environmental Summit on October 18 and 19, 2000 in Dallas, Texas. Tribal leaders from the 65 Federally recognized Tribes and three tribal consortia located in EPA Region 6 were invited to discuss issues of concern to Native Americans with officials of EPA headquarters and regional offices and representatives of other Federal agencies that are responsible for public health and the environment in Indian Country. The summit was held to continue to improve communication and build partnerships between the Tribes and EPA Region 6 and to continue efforts that had begun during the summits held in August 1997, in Dallas; August 1998, in Oklahoma City; and September 1999, in Albuquerque. The summit also provided a forum for participants, particularly newly elected tribal leaders and tribal environmental directors, to draw on the knowledge of national and regional experts to increase their understanding of various environmental issues that affect Indian Country. Further, it provided participants the opportunity to ask questions of and express their concerns to senior-level managers of EPA Region 6.

The theme of the summit continues to be "To Protect and Preserve" the environment and the health of tribal communities. During the two-day meeting, tribal leaders, tribal environmental directors, and representatives of Federal agencies discussed such issues as health matters in Indian Country; emergency response related to the Los Alamos fires; and water quality. In addition, participants heard updates on activities of EPA's American Indian Environmental Office (AIEO) and the Tribal Operations Committee (TOC) as well as a presentation on EPA's General Assistance Program (GAP). Participants also attended concurrent breakout sessions where they discussed such issues as consumer confidence reports, Brownfields redevelopment, lead poisoning prevention, fraud awareness, open dumping of waste, air quality, and persistent organic pollutants (POP). Approximately 190 people attended.

PROCEEDINGS OF OCTOBER 18, 2000

This section presents summaries of the opening remarks; an update on the activities of EPA's AIEO, EPA's TOC, and EPA Region 6's Regional Tribal Operations Committee (RTOC); and a presentation on health matters in Indian Country.

Opening Remarks

Mr. Perry D. Williams, Alabama-Coushatta Tribe of Texas, opened the meeting by offering a prayer in his language. Ms. Ellen Greeney, Associate Director, Regional Native American Office, EPA Region 6, conducted the roll call of the Tribes and Federal agencies. Ms. Greeney then introduced Mr. Gregg Cooke, Regional Administrator, EPA Region 6.

Mr. Cooke welcomed participants and expressed his appreciation to tribal leaders and representatives for their attendance at the summit and that the occasion was his third opportunity to attend such a meeting. Continuing, he stated that he had witnessed tremendous growth, measured in the level of discussion between tribal and EPA representatives, since he first attended a summit. He pointed out, Tribes in Region 6 lead the nation in air quality monitoring for particulate matter greater than 2.5 micrometers and 61 of the 65 Tribes in Region 6 have received grants to develop environmental capacity.

Mr. Cooke stated that such progress reflects the development of tribal capacity and the commitment of EPA to the Tribes. The Agency's tribal program has made great strides in both funding and sophistication over the past 8 years, he said. However, EPA and tribal representatives have not solved all problems, he added. For example, he noted, the issue of jurisdiction in Oklahoma remains a very difficult one to approach. Further, water quality issues in New Mexico continue to present challenges that are difficult to resolve, he continued. Mr. Cooke then reminded the audience that election years have consequences for all Federal agencies. He assured the audience that the staff of the Agency and of Region 6 are dedicated and that their commitment will continue after the election. Mr. Cooke then urged the Tribes to continue their dialogue with EPA.

Governor Red Eagle Rael, Pueblo of Picuris, then joined Mr. Cooke at the podium for a ceremony marking the signing of the Pueblo of Picuris' Tribal Environmental Agreement (TEA) with EPA Region 6. Both Mr.

Cooke and Governor Rael signed the agreement before the audience as witness. Mr. Cooke then congratulated Governor Rael. He then recalled the first TEA signed in Dallas in 1997, when Mr. Jerry Clifford, Deputy Regional Administrator, EPA Region 6, and 14 Tribes stepped forward to pledge their support; since then, he noted, 27 TEAs had been signed with Tribes in the region. TEAs represent the ability and capacity of Tribes to implement environmental programs, declared Mr. Cooke. The signing ceremony, he continued, illustrated both the progress and growth of tribal capacity and the dedication of the staff of the EPA Region 6 Native American Office.

Mr. Cooke issued special recognition to several Tribes and tribal consortia located in Region 6. First, he recognized the Inter-Tribal Environmental Council (ITEC) of Oklahoma for its exemplary efforts in the field of air quality monitoring. Over the previous year and a half, continued Mr. Cooke, ITEC had implemented one of the nation's leading tribal air quality monitoring programs for eight Tribes located in Oklahoma. The program tracks compliance with standards governing the levels of sulfur dioxide, nitrogen dioxide, carbon monoxide, ozone, and particulate matter in ambient air. With ITEC's encouragement, four Tribes have decided to submit applications for grants to support their assumption of responsibility for overseeing the particulate matter monitoring operations. In addition, ITEC is conducting meteorological monitoring at three locations, Mr. Cooke added. He then congratulated ITEC for implementing its exemplary program and encouraging other Tribes to establish air monitoring programs.

Mr. Cooke then recognized the Pueblo of Santa Ana for its successful negotiation of the first Tribal Performance Partnership Grant (PPG) in Region 6. The PPG incorporates multiyear activities and funding under both the GAP and the Clean Water Act (CWA), totaling almost $370,000. Mr. Cooke stated that the partnership is special because the Agency's rule for tribal PPG's was not yet final and the Pueblo of Santa Ana had volunteered eagerly to conduct a pilot program.

Mr. Cooke then recognized the Osage Nation for its long-term support for and assistance in the Underground Injection Control (UIC) program. The one-of-a-kind program, he continued, began 20 years earlier, when EPA and the Osage Nation developed a cooperative agreement to implement the UIC program in Indian Country. Five inspectors from the Osage Nation conduct more than 2,800 injection well inspections each year, he pointed out. The successful partnership, he noted, had produced an overall compliance rate of 90 percent.

Next, Mr. Cooke recognized the Pueblo of Taos as a model for working with EPA, other Federal agencies, and Tribes to close a dump. To prevent future pollution, the Pueblo of Taos also had developed an effective alternative to open dumping. The Governor of Taos and the tribal council had obtained the funding and approved the location of a new waste transfer station, with construction scheduled to begin in Spring 2001, added Mr. Cooke.

Mr. Cooke then recognized the All-Indian Pueblo Council (AIPC) for its successful negotiation of the first Regional Tribal Integrated Solid Waste Management Partnership Grant. AIPC had negotiated partnership endorsements with six Pueblos and won the national competition for the grant, continued Mr. Cooke. The Pueblos were approaching completion of the 3-year effort and had attained a number of accomplishments, most notably the completion of waste stream assessments and the development of cost-tracking systems and solid waste management manuals for their partners, he stated.

The Alabama-Coushatta Tribe of Texas was recognized for its efforts to provide consistently high-quality drinking water to its customers, Mr. Cooke announced. He stated that it requires constant and consistent attention to the public water system to provide quality drinking water day-in and day-out. Mr. Cooke congratulated the Alabama-Coushatta Tribe for setting an exemplary standard for consistency and quality.

Mr. Cooke then recognized the Pueblo of Tesuque for providing timely consumer confidence reports (CCR) to its customers for 2 consecutive years – 1999 and 2000. All owners and operators of public water systems are required to produce CCRs annually to inform their customers of the quality of the drinking water being provided, he explained.

In conclusion, Mr. Cooke recognized Governor Malcolm Bowekaty, Pueblo of Zuni, for his help in establishing the first RTOC for EPA Region 6. Governor Bowekaty served as the first tribal co-chair of the RTOC, he pointed out. The RTOC, explained Mr. Cooke, had adopted and signed a charter, agreed upon staggered

terms for the 17 tribal representatives, and discussed numerous issues during its quarterly meetings over the past year.

Update on Activities of the U.S. EPA's American Indian Environmental Office

Ms. Kathy Gorospe, Director, EPA AIEO, provided an update on activities related to Indian Country that are conducted by EPA headquarters. Ms. Gorospe first stated that environmental protection is her personal mission. Continuing, she stated that she respects the challenges related to environmental protection faced by Tribes. She then thanked the tribal representatives present for their hard work in preserving their tribal lands.

Ms. Gorospe explained that her responsibility as Director of AIEO is to provide funding for, oversight of, and guidance on grants administered under the GAP. Further, the office carries out that responsibility on the advice of the TOC, she pointed out. Exhibit 1 describes the TOC.

Exhibit 1

U.S. ENVIRONMENTAL PROTECTION AGENCY
TRIBAL OPERATIONS COMMITTEE

The mission of the U.S. Environmental Protection Agency's (EPA) Tribal Operations Committee (TOC) is to advance the protection and improve the conditions of tribal health and the environment in Indian Country. The relationship between the TOC and EPA program offices does not substitute for the government-to-government relationship between EPA and tribal governments.

The TOC, comprised of EPA senior management and representatives from various Tribes, provides input into EPA's "operational" decision-making process affecting Indian Country. There are 19 tribal members from nine of EPA's ten regions. The Tribes in each region determine the method of selecting representatives and alternates.

Currently, Ms. Gorospe stated, GAP still focuses on building tribal capacity and technical abilities. The GAP grant support includes financial assistance; support for programs conducted under the CWA and the Clean Air Act (CAA); technical assistance; scholarship programs, such as the American Indian Science and Engineering Society's program; and the tribal air monitoring support program, treatment in a manner similar to that accorded states, she explained. The purpose of building capacity on tribal lands, she continued, is to ensure that tribal environmental programs can carry out their environmental mission to protect and preserve the Tribe's natural resources.

Continuing, Ms. Gorospe noted that the 2001 EPA tribal budget proposal includes a $10 million increase in funding for GAP grants. EPA also had proposed an increase in the tribal share of wastewater treatment funds, she continued; currently, the proposal is approved only through 2001, she added. EPA also had requested that the cap on Section 319 funds under the CWA for watershed and non-point source management programs be lifted; currently, she stated, the program is approved only through 2001. Continuing, Ms. Gorospe reported that EPA had requested administrative authority to enter into cooperative agreements in Indian Country to carry out Federal environmental protection programs where they do not yet exist. In addition, Ms. Gorospe then discussed the proposal to promulgate core water quality standards where they also do not yet exist in Indian Country. The program includes a proposed "opt-out" provision, under which Tribes can choose not to participate in the program, she noted. The opt-out provision reflects comments submitted and views expressed by some Tribes, she said. The rule has been submitted to the Office of Management and Budget (OMB) for review, she added.

Ms. Gorospe then discussed the development of the proposed PPG rule. Exhibit 2 describes the proposed rule. She explained that EPA intended the proposed PPG rule to serve as a management tool that Tribes could use to combine GAP grants and other grants into one funding mechanism. The proposed rule, she explained further, revises and updates requirements related to grants and simplifies administrative procedures related to grants. In addition, another key feature of the proposed rule would allow Tribes to negotiate budgets for more than one year, she said. Ms. Gorospe reported that the proposed rule had been submitted to OMB for review.

Exhibit 2

PROPOSED PERFORMANCE PARTNERSHIP GRANT RULE

The Performance Partnership Grant (PPG) rule proposes to revise and update requirements under several U.S. Environmental Protection Agency (EPA) regulations, particularly subpart A of 40 Code of Federal Regulations (CFR) Part 35, governing grants to IndianTribes and intertribal consortia. The proposed rule creates a new tribal-specific subpart that includes only provisions for environmental program grants to Tribes; and addresses the PPG program for Tribes.

The PPG program fosters EPA's continuing efforts to improve partnerships with its tribal recipients by increasing flexibility in using environmental program funding. The regulation reflects efforts by EPA and its tribal partners to increase administrative and programmatic flexibility for Tribes, while moving toward improved environmental protection.

Ms. Gorospe then discussed the Executive Order on consultation between the White House Domestic Policy Council and American Indians and Alaskan Natives that currently was under development. She stated first that the Executive Order is a top priority of the administration for issuance before the end of the administration's term and that the proposed Executive Order is similar to the Presidential Memorandum President Clinton issued in April 1994, she said. The new Executive Order requires that each Federal agency designate an official responsible for consultation with Tribes within 45 days of the Executive Order's issuance. Second, the Executive Order requires that, within 90 days of the issuance of the Executive Order, each designated Federal official submit to OMB an outline that describes how each agency will meet its consultation requirement. Finally, the director of OMB and the Assistant to the President for Inter-Governmental Affairs will consult with tribal officials within 180 days of the issuance of the Executive Order to ensure that the Executive Order has been executed properly. Ms. Gorospe stated the Executive Order is expected to be issued near the end of October 2000. Further, Ms. Gorospe added, the Domestic Policy Council is working on an inter-governmental memorandum of understanding (MOU) on environmental protection. Noting that MOUs have been more successful at the regional level, she encouraged Tribes to support a regional MOU.

Ms. Gorospe then described subtle changes under the GAP. Primarily, she said, Tribes should focus on better articulation of the purpose of the program and activities carried out under it. Continuing, she suggested that better articulation in correspondence related to the program would help both EPA and Tribes justify additional funding for Tribes. Ms. Gorospe then discussed the Baseline Assessment Project, undertaken four years earlier to meet requirements under the Governmental Performance and Results Act. The Act, she explained, requires that each Federal agency develop a strategic plan with goals, objectives, and activities associated with funds. EPA had discovered, she noted, that, in the absence of a baseline study, measuring environmental progress and the use of funds was difficult. The enormous information-gathering project, she explained, began with a compilation of information from various Federal agencies related to environmental issues in Indian Country. The next phase of the project was to entail visits by tribal contractors to Indian Country to collect additional information. Adding that EPA cannot ensure the confidentiality of information collected in Indian Country, Ms. Gorospe noted that disclosure of information not collected with Federal funds was to be voluntary.

Ms. Gorospe concluded by encouraging tribal representatives to prepare for the pending change of administration. She first urged that Tribes be patient until the new administration is in place. She then

reminded the audience that, although a new administration would be taking office, the career employees and staff of the Federal agencies will remain in place. Tribal representatives and Federal employees and staff should work together, she suggested, to educate the new administration, and continue moving forward.

Update on the Tribal Operations Committee

Mr. Pablo Padilla, Program Manager, Zuni Environmental Protection Program, Pueblo of Zuni, provided the audience an update on the activities of the TOC. Mr. Padilla first stated his belief that many tribal members believe that they are not well informed about activities that occur at the national level. First, he stated that the members of the TOC met with Ms. Carol Browner, Administrator of EPA, in July 2000. The members of the TOC and Ms. Browner, he explained, had discussed concerns related to open dumps and funding restrictions. In addition, the members of the TOC had presented to Ms. Browner recommendations for changes related to the allocation of funds for Indian Country. The budget recommendations submitted by the TOC were based on the committee's assessment of national environmental priorities in Indian Country so that funding could be better allocated where it is most needed, he explained.

Continuing his update, Mr. Padilla announced that EPA's Office of Enforcement and Compliance Assurance had issued a draft manual for issuing Federal inspector credentials for states and Tribes. Mr. Padilla pointed out that inspector training is available to tribal members, stating his hope that potential inspectors would take advantage of the opportunity. He suggested many of the Oklahoma Tribes might be interested in pursuing such training.

Next, Mr. Padilla noted that the EPA Office of Research and Development (ORD) was establishing a Tribal Science Council and that the members of the TOC were working with ORD to select potential members. The TOC and EPA ORD currently are formulating goals and objectives for the Tribal Science Council, he said. Continuing, Mr. Padilla stated that EPA Office of Air and Radiation (OAR) provided the TOC a presentation on the new 8-hour ozone rule.

Mr. Padilla then described the development by the TOC of draft resolutions increasing the ceiling on funding related to Section 319 of the CWA and routine water cooperative language as well as increasing funding for projects conducted under the provisions of Section106 of the CWA. He emphasized that the members of the TOC strongly support the resolutions.

Ms. Greeney recognized Dr. Norman Dyer, Acting Regional Scientist and Science and Technology Advisor, EPA Region 6, (in the audience) as the EPA Region 6 representative on the Tribal Science Council.

Update on Activities of the U.S. EPA Region 6 Regional Tribal Operations Committee

Governor Bowekaty presented an update on the activities of EPA Region 6's RTOC. Governor Bowekaty began by recognizing the efforts of Mr. Chad Smith, Principal Chief, Cherokee Nation of Oklahoma and Ms. Nancy John, Environmental Coordinator, Cherokee Nation of Oklahoma, related to the RTOC. He then stated that the Louisiana RTOC seat currently was vacant. He noted that the RTOC process had begun four years before the current conference. He then recognized and thanked the regional tribal officials at EPA Region 6 for laying the foundation for the RTOC.

Continuing, Governor Bowekaty stated that the Tribes in EPA Region 6 had been one of the last, among other EPA regions, to form a RTOC. Since September 1999, he continued, the RTOC had met four times. The body is experiencing "growing pains" he said, noting that the four meetings had been focused on the organization of the committee itself rather than on addressing environmental issues of the Tribes located in Region 6. Governor Bowekaty stated that the RTOC is planning a 5-year timeframe, with long-term stability and flexibility. He encouraged current charter members to look for replacements upon the expiration of their charters and unchartered Tribes to seek charters from the committee. Governor Bowekaty stated that the primary interest of the RTOC is advocacy of environmental issues. The charter itself provides much room for growth, and an advisory committee has been established to evaluate its effectiveness, continued Governor Bowekaty. The advisory committee is analyzing the current charter and developing procedures that will be most effective to address the technical issues of environmental protection related to Indian Country, he said.

Governor Bowekaty then summarized the discussions that took place during the meeting of the RTOC on Tuesday, October 17, 2000. He stated that the RTOC requires that both tribal leaders and tribal environmental directors best represent and address environmental needs in Indian Country. Tribal leaders should be at the forefront in the government-to-government consultation process and environmental directors must be involved in technical discussions, he declared. Therefore, continued Governor Bowekaty, the RTOC recommends that Tribes create committees of environmental directors to consult with tribal leaders. He then pointed out the need to clarify the procedures of the RTOC. It is important that the recommendations be implemented before the election of new TOC members in November, he said. He explained to the audience that regions that have had RTOCs in operation for more than 3 years receive more funding than regions that still are developing RTOCs. Further, he urged that, to better advance tribal environmental issues, the Region 6 representatives to the RTOC open positions on the TOC. He emphasized the importance that Region 6 Tribes show they have a progressive RTOC when they advocate for Federal funding. Governor Bowekaty again emphasized the need to focus on the technical issues confronting Tribes; as examples, he named the new arsenic ruling, the 8-hour ozone ruling, and the issue of radon.

The primary function of the RTOC is to disseminate the latest information about environmental issues, said Governor Bowekaty, reminding the audience that Tribes have the right to request a meeting with any EPA senior manager to discuss specific issues. The RTOC provides the information that Tribes need to make educated decisions and formulate procedures to best meet specific goals related to environmental programs, he continued. Forums between the RTOC and EPA senior managers are open to Tribes that are not charter members, he added. When Tribes present individual problems to the RTOC, the committee can then gauge common problems confronting Tribes in the region. Continuing, he stated that a common front provides the Tribes in the region greater weight when advocating for increased Federal support for their programs.

Comments from Tribal Leaders

Ms. Greeney then opened the floor to the tribal leaders.

Chief Don Abney, Sac & Fox Nation, began his comments by expressing his appreciation to EPA and all the participants at the summit for attending the meeting. He reminded the audience of the importance of the knowledge shared at such meetings. He then encouraged the tribal representatives to share the information they had gathered during the meeting with other tribal leaders throughout Indian Country. Chief Abney stated that the environment is an important issue because it extends from “earth to eternity.” He then thanked Ms. Gorospe for her continued support for both the RTOC and Tribes throughout the regions. He then stated that the Sac & Fox Nation knows what it is like to be without clean water. The Tribe’s water source had been contaminated with salt in the 1950s, he explained. He then stated that clean water opens the door for economic development; without water, he emphasized, “a Tribe is nothing.” Chief Abney then thanked Ms. Janice Stevens, Director of the Sac & Fox Nation’s environmental staff, for her hard work and dedication. In conclusion, he stated that he was “truly inspired” by the number of staff and Tribes working together on the environment.

Governor Don LightningBow, Pueblo of Taos, first thanked and commended Region 6 for its hard work to protect “Mother Earth.” Stating that it was not necessary to mention who is the forerunner in the protection of “Mother Earth,” he reminded the audience that Indian lands are being encroached upon by development and that development can threaten the environment. Governor LightningBow then stated that Tribes are responsible for protecting Indian lands; and that EPA is responsible for setting environmental compliance standards. Tribes depend on funding from EPA to meet the established standards; yet, often there is not enough funding available to Tribes to allow them to comply with the standards, he observed. Continuing, he stated that the budget for fiscal year 2001 “looks better,” but added that it appeared that Tribes would continue to compete against one another for funds. Governor LightningBow asked that EPA not force the Tribes into such competition.

First Lieutenant Governor Terry Aguilar, Pueblo de San Ildefonso, began his comments by stating that he would like to discuss development. He stated that Tribes have made much progress in developing their community identities; however, he stressed that it continues to be difficult to explain the effects of development on the environment. He then explained to the audience that the Pueblo sits on the boundary of the Los Alamos National Laboratory, which had burned during the recent Sierra Grande fire. He stated that,

during the fire, EPA had wanted to set up air monitors on the Pueblo's reservation. The Pueblo, which did not want EPA on its lands, had difficulty communicating that position, he explained. The Pueblo wanted greater involvement in the process because outsiders might frighten members of the community who did not understand the situation, continued Lieutenant Governor Aguilar. The Pueblo was responsible for protecting its own people, he declared. He then stated that the Los Alamos Laboratory received hundreds of millions of dollars to rebuild, yet the Pueblo received only two million dollars to rebuild. He explained that the Pueblo is being devastated by water runoff caused by extinguishing the fires. He stated further that the lands that the Pueblo consider to be its people's aboriginal homeland had been destroyed completely by the fire; yet, he said, the Federal government has told the Pueblo that it had not lost anything. However, he continued, how does he explain that perspective to his elders who use the land for traditional practices. In conclusion, Lieutenant Governor Aguilar expressed to EPA the need to enforce long-term planning in its programs because tribal programs can dissolve without continued funding.

Mr. Steve Juanico, Brownfields Coordinator, Pueblo of Acoma, first discussed the government-to-government relationship, as described in the Presidential Memorandum on the subject issued by President Clinton in 1994. He stated that many Federal agencies implement the requirements of the memorandum. The memorandum, however, is interpreted differently by the various Federal agencies, he continued. Mr. Juanico suggested that a government agency should be created that would deal solely with Federal agencies and tribal issues. He then stated that all the Federal agencies should have standard procedures for awarding grants to Tribes. Currently, he continued, many agencies work together through "simple gentlemen's agreements." Tribes then have no mechanism to ensure that the agreements are upheld, he pointed out. He then stated that EPA's Brownfields Economic Redevelopment Initiative is a "blanket program" that includes states and cities, as well as Tribes. Tribes, therefore, must compete with states and cities, which have greater resources "to tap" when applying for funding under the initiative.

Ms. LaRue Parker, Chairperson, Caddo Indian Tribe, stated that she had lived in New Mexico for 21 years and is familiar with all the Pueblos and people there. She then said it was wonderful to see "all the people in the audience banding together." Continuing, she said that the environment is an important issue and will continue to be so in the future.

Governor Red Eagle Rael, Picuris Pueblo, first stated that all people are stewards of the land. Continuing, he said that stewardship is especially difficult in light of the issue of development. He stated that mining operations are very wasteful in this time of modern technology. Funding, he continued, is necessary to achieve stewardship of the land. He then emphasized that stewardship begins "in everyone's own backyard." Nine communities are located in the vicinity of Pueblo of Picuris, he pointed out. Governor Rael reminded the audience that his Pueblo cannot be a steward of its own land without protecting the land of the communities near the Pueblo. Therefore, he declared, the communities must work together as stewards of the land. Governor Rael then stated that his community was working on a regional water supply system. He reminded the audience that during the signing ceremony for the TEA, EPA and his Pueblo now would work together as stewards of the land, he continued. Governor Rael then thanked his environmental staff for their hard work that had made the agreement possible.

Lieutenant Governor Victor Montoya, Pueblo of Sandia, stated that each Tribe is unique. He also stated that all are stewards of their land. Continuing, he said that economic development always is present and that it is the purpose of tribal environmental boards to protect "Mother Earth" and to ensure that economic development is approached sensibly.

Governor Malcolm Bowekaty, Zuni Pueblo, encouraged the audience to keep informed about current environmental issues. He also urged tribal representatives to attend meetings of the RTOC. He reminded the audience that they have many resources and contacts to support advocacy of environmental protection. Tribes have the responsibility to exercise all the options available to them to ensure environmental protection, he said. Continuing, Governor Bowekaty stated that Tribes should examine national policy and priorities to better position tribal needs. At the national level, the TOC can best implement tribal resources in advocating the needs from the regional level, he concluded.

Mr. Amadoe Shije, Program Manager, AIPC, first declared that pollution began 500 years earlier, when Europeans landed on the North American continent. It had taken 500 years to begin to control the pollution,

he said. He then stated it will take another 500 years to clean up the damage of those previous 500 years of pollution. He expressed his belief that EPA does have a commitment to protect the environment of Indian Country as Mr. Cooke had stated. He then thanked the career staff responsible for maintaining that commitment within EPA. Mr. Shije commended the 19 Pueblos of the AIPC and the scientists working for the consortium for their hard work. He then suggested that a standard formula be developed to help all Tribes. Consortia can pull resources together to secure Federal help, he pointed out. He stated that the AIPC receives no funding from the Bureau of Indian Affairs (BIA), U.S. Department of the Interior (DOI) or the Indian Health Service (IHS), U.S. Department of Health and Human Services (HHS). However, with the assistance of EPA, the consortium can continue the mission of protecting the environment, he stated in conclusion.

Presentation on Health Matters in Indian Country

Ms. Leslie Campbell, Acting Tribal Coordinator, Office of Tribal Affairs, Agency for Toxic Substances and Disease Registry (ATSDR), first stated that ATSDR had been created under HHS as a public health agency through Superfund legislation. Exhibit 3 describes the mission of ATSDR. She then stated that her presentation had been aptly named because the environment and health matters in Indian Country are not separated easily. She then informed the audience that the headquarters of ATSDR is located in Atlanta, Georgia, with regional offices co-located with those of EPA. ATSDR has mandated authority to provide technical assistance through public health assessments (PAH) and public health consultation (PHC), she continued. PHAs are similar to risk assessments but are geared toward analyzing environmental data collected by state or tribal governments to assess health effects caused by environmental conditions, she explained.

Exhibit 3

AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY

The mission of the Agency for Toxic Substances and Disease Registry (ATSDR), an agency of the U.S. Department of Health and Human Services (HHS), is to prevent exposure and adverse human health effects and diminished quality of life associated with exposure to hazardous substances from waste sites, unplanned releases, and other sources of pollution present in the environment.

ATSDR is directed by congressional mandate to perform specific functions related to the effect on public health of hazardous substances in the environment. Those functions include public health assessments of waste sites, health consultations related to specific hazardous substances, health surveillance and registries, response to emergency releases of hazardous substances, applied research in support of public health assessments, development and dissemination of information, and education and training related to hazardous substances.

Ms. Campbell again emphasized that ATSDR examines the total environmental picture in evaluating overall health conditions within an environment. She then stated that a PHC is a quicker health assessment that is used in response to a particular pathway. PHCs also can include technical evaluations of environmental work plans and sampling plans, she added. Ms. Campbell stated that ATSDR primarily evaluates environmental exposures and the method by which exposures move through a food chain. She then stated that ATSDR performs many activities beyond conducting a PHC, including education, research, epidemiological studies, and exposure investigations.

The Office of Tribal Affairs at ATSDR, she continued, was created in January 1999. Tribal health is a top priority of the agency, and the agency would like to become more efficient in implementing its tribal program, she said. The agency had been funding tribal environmental programs and consortia to develop environmental health education programs, she added. Further, she said, the agency had undertaken a cooperative agreement to provide funding for tribal colleges and universities to develop curricula in

environmental health education, science, and nursing programs. Ms. Campbell explained that, each Spring, funds are awarded through cooperative agreements to fund environmental public health capacity-building programs. The program is open to both Tribes and states; to date, only states have applied, she noted.

The agency currently was moving into researching exposure as it affects those individuals who follow traditional subsistence lifestyles, Ms. Campbell continued. ATSDR, she explained, was beginning to develop a data base that would be made available to EPA and all the Tribes; the data base will contain the information published in Region 6. ATSDR also was supporting an expert panel which will meet on December 4 and 5, 2000, she said. The panel will provide advice and recommendations to ATSDR about subsistence exposure metals uptake in lands used in traditional ways by Native Americans. Ms. Campbell stated the hope that the information would assist the agency in preparing more effective responses for Tribes that request such information. Further, she noted that ATSDR was working with IHS to formulate a definition of Indian public environmental health. ATSDR, she continued, also was planning a national summit to address the tribal perspective on public environmental health. She then added that all cooperative work between ATSDR is carried out through consultation with the Ad Hoc Tribal Workgroup of the agency.

Ms. Campbell stated that, currently, ATSDR was funding an average of $50,000 per grant award a year under the cooperative agreements she had described. She then stated that the grants are open to states as well as Tribes. ATSDR, she noted, was considering moving toward separating state and tribal funds because of the need for capacity-building for Tribes. She concluded by expressing the agency's eagerness to assist Tribes in resolving technical issues as they develop work plans to address environmental issues related to Indian Country.

Concurrent Breakout Sessions

This section presents highlights of the breakout sessions that were held concurrently on October 18, 2000.

Attorney's General Roundtable

Mr. Ben Harrison, Indian Law Advisor, EPA Region 6, opened the Attorney's General Roundtable by providing a brief update on legal cases related to tribal governments.

Mr. Harrison stated that EPA's interpretation of the CAA affects all Tribes. In *New Mexico* v. *EPA*, the tribal authority rule was challenged, he said. He explained that, under the provisions of the law, Tribes can implement the CAA, although EPA has authority to identify those parts of the act for which tribal implementation is appropriate. The provision was challenged by the state of New Mexico, noted Mr. Harrison. He then presented a brief history of the case, adding that EPA recently had won the case.

Continuing, Mr. Harrison provided an update on *HRI* v. *EPA*, which involved the Navajo Eastern Agency, located in a checkerboard area of New Mexico, and a uranium mining operation seeking an aquifer exemption from EPA. After applying a six-point test, EPA determined that the aquifer in question was located in Indian Country and denied the request for the exemption. HRI challenged the decision that the aquifer was located in Indian Country; however, Mr. Harrison pointed out, in cases of dispute over whether a portion of land is in Indian Country, EPA has authority. The aquifer exemption was denied, he said.

Commenting on the limits of EPA's trust responsibility, Mr. Harrison explained that, in early case law, court decisions supported trust responsibility as a way to make the desired decisions about how to handle the land. Now, he said, there are two types of trust responsibility, one of which is a general duty, which is a moral duty to help Tribes return "to where they used to be." Further, he continued, there is a legal basis for trust responsibility. Many courts, he observed, look only at a treaty and determine whether it establishes an "express" or specific duty. If so, he said, the Federal government is held to a higher level of trust responsibility.

Mr. Harrison then opened the floor to questions. A participant asked about cases in which certain data or information is proprietary to a Tribe, could that information be used against the Tribe by other Federal agencies or could a Tribe as an entity claim that the data are confidential business information (CBI). Mr. Harrison responded that data collected or paid for by the Federal government usually are public information.

However, he said, further research on the issue would be necessary; he then agreed to research the issue further.

Another participant stated that a private entity located near his tribal lands had had 60 past environmental violations and had contaminated tribal waters. The participant asked when EPA could take legal action. He also asked about the process of enforcement used by EPA. Mr. Harrison responded that there are several factors involved in deciding whether or not a legal action should be taken, such as the severity of the contamination, the resulting environmental effects, and the quantity of a chemical released. He stated that EPA inspectors first must inspect the site, then forward their findings to EPA's legal office, which could formulate a complaint. A member of the Pueblo of Sandia commented that wastewater discharges from the wastewater treatment facilities of the city of Rio Rancho, New Mexico, has polluted the tribal waters of the Pueblo of Sandia, but that EPA nevertheless is going to renew one of the city's National Pollutant Discharge Elimination System (NPDES) permits. The participant asked whether a citizen's suit is the only way to persuade EPA to take action, commenting that Tribes have limited financial resources for fighting legal battles. Mr. Harrison agreed that, unfortunately, EPA's funding for legal actions is limited. He added that it is realistic that a Tribe issue its own NPDES permits; however, he continued, the Navajo Nation is the only Tribe that had made significant progress toward establishment of such a permit.

Presentation on Healthy Environments and Living Places for Kids Program

Mr. Michael Miller, Indoor Environments Coordinator, EPA Region 6, opened the session by introducing Ms. Traci Fambrough and Ms. Donna Cooper both from EPA Region 6. All three, he stated, work with voluntary issues (issues that are not linked with regulations) that deal with environmental pollutants inside buildings. Mr. Miller stated that his program addresses any issue that may arise indoors, including asthma triggers such as cat dander and dust mites; radon (a radioactive gas from soil); carbon monoxide poisoning; formaldehyde; and mold.

The Healthy Environments and Living Places (HELP) for Kids program, Mr. Miller continued, was initiated 3 years earlier with funding from EPA's Office of Children's Health Protection. He stated that the program had been developed to assess spaces, such as a home, a day-care facility, or a school, to identify environmental risks children would face in those settings. Continuing, Mr. Miller stated that the program focuses on all activities over which people have control, such as the application of pesticides. Ms. Fambrough added that other government agencies, such as the Centers for Disease Control and Prevention, HHS and the U.S. Department of Housing and Urban Development (HUD) also were involved in the development of the program.

Continuing, Mr. Miller briefly described the background of the HELP for Kids program. He stated that approximately 90 percent of all individuals' time is spent indoors, adding that indoor air can be more polluted than outdoor air. Mr. Miller listed some of the environmental and safety hazards one can be exposed to indoors, including lead-based paint, pesticides, radon, tobacco smoke in the environment, hazardous chemicals, and mold. Mr. Miller stated that EPA recommends that all homes be tested for the presence of radon; he added that EPA also recommends that parents who smoke should do so outdoors to reduce exposure of their children to tobacco smoke. Because young children still are developing, they may be more susceptible to the adverse effects of exposure. Also, because they breathe more air per weight unit than adults, play on the floor and put their hands or toys in their mouths, children may receive a higher exposure than adults. Mr. Miller stated that, although the program affects the health of everyone in a house, school, or day-care facility, it has the greatest effect on the health of children.

Mr. Miller then identified overall goals of the HELP for Kids program, as follows:

- Focus on environmental issues over which individuals have control (rather than ambient air).
- Identify environmental health and safety hazards in the three indoor environments that include homes, home-based child-care facilities, and schools.
- Raise awareness of the importance of indoor hazards.
- Develop prevention and mitigation action plans that emphasize low-cost and no-cost approaches.
- Provide training to assist implementation of such action plans by community groups, school districts, agencies, and alliances.

Referring to the goal of focusing on the three indoor environments, Mr. Miller described the components of the HELP for Kids program as they are related to each of those areas. The home area, he continued, is based on the Master Home Environmentalist Program of the American Lung Association of Washington State. Mr. Miller noted that the features unique to the HELP for Kids program include its emphasis on concern about asthma and the identification of high-priority "critical hazards," expansion of preventive and corrective actions, and such additional elements as handouts and lists of local resources. He then described such program components as the personal check list, the home review check list, and the home action plan that are the "guts" of the home area program. Those tools, he added, are designed to be modified by each community.

The school area, Mr. Miller explained, is based on EPA's Indoor Air Quality Tools For Schools (TFS). Continuing, he explained that, the HELP for Kids program adds supplemental materials, such as a "roadmap" to assist in initiating the program, forms and a walk-through check list that improves the original TFS, and check lists to be used to identify other environmental and safety hazards. He stated that the tools are intended to be customized by individual districts and schools.

Mr. Miller then stated that he would not discuss the components for the home-based child-care area, because they were quite similar to the components of the home area.

During the two-day training period, Mr. Miller continued, all issues related to hazardous materials, water, mold, and safety are discussed. He added that the concept of the environmental hazard triangle also is presented. The source, the occupant, and an exposure mechanism (a means of exposing the occupant to the source) must all be present to constitute an environmental hazard, he explained. During the training, Mr. Miller continued, much discussion is based on the components of the triangle and methods of preventing or controlling hazards. Mr. Miller added that, during the two days, participants also experience extensive hands-on training.

Mr. Miller then stated that the classroom training comes to an end with discussion of key strategies for improving indoor environments. He listed those strategies as follows:

- Identify the health needs of occupants.
- Identify behaviors of occupants that increase or reduce exposures.
- Ensure that combustion equipment is tuned and maintained and that it drafts well.
- Keep buildings dry.
- Stop dirt at the door.
- Control pests through application of the principles of integrated pest management (reducing the food source and habitat for pests).
- Make buildings lead-safe.
- Clean thoroughly twice a year to remove stored particles.
- Ventilate stationary sources of contaminants and moisture by exhaust.
- Provide dilution ventilation (fresh air) to control contaminants generated by occupants.
- Test for radon.
- Eliminate safety hazards.
- Purchase fewer hazardous supplies and chemicals and use them sparingly.

Concluding his presentation, Mr. Miller stated that Region 6 had developed the HELP for Kids program because EPA had received hundreds of calls from people asking the Agency to check their homes. No current programs provide such a service, he added. Mr. Miller then noted that the HELP for Kids program is not funded and is not yet a national program. He added that the program provides organizations and groups the tools necessary to check homes, home-based child-care facilities, and schools health risks to children. Mr. Miller stated that material for the HELP for Kids program would be placed on the EPA Region 6 Indoor Environment Internet home page within the next few months. He then suggested that anyone who had questions on indoor air, radon, or the program call him at (214) 665-7550.

Session on Air Quality

The session on issues related to air quality in Indian Country was conducted by Mr. Carl Edlund, EPA Region 6; Mr. Mehrdad Khatibi, Environmental Programs Manager, Pueblo of Jemez, and Ms. Rosanna Sanchez, Program Manager, AIPC.

Mr. Edlund first reviewed the issues discussed at the Third Annual Tribal Environmental Summit held in September 1999, which included grants; programs being funded; and communication between EPA and the Tribes. The most important of the issues, he said, was communication. EPA's goal, he continued, is to improve communication, by engaging in two-way conversations and helping Tribes understand EPA's perspective on regulating air quality. Mr. Edlund then summarized the tasks to be accomplished during the current session on air quality: (1) describing grants and the purpose of an annual letter to tribal environmental directors; (2) discussing how grant funds would be distributed; and (3) discussing the reason for sending a notification letter when EPA's tribal air Internet home page is updated.

One way EPA believed communication could be improved, he said, was to draft a letter to be distributed to the Tribes annually. The annual letter is intended to describe the purpose of grants issued by EPA, continued Mr. Edlund. EPA will receive money for grants under the CAA, he said. The grants, Mr. Edlund explained, are intended to support the national and regional tribal air initiative by providing baseline data on air quality in Indian Country. Mr. Edlund stated that EPA was to send the letter to the tribal environmental directors by early December 2000.

Interest, Mr. Edlund explained, had been expressed by Tribes to develop an air tribal program handbook, which would serve as a guideline and explain how grants under the CAA are distributed. The handbook, he continued, would (1) explain to potential tribal recipients the type of grants that are available, (2) identify activities, which are necessary to receive grants, and (3) describe how to obtain the funding. EPA, said Mr. Edlund, had made a commitment to provide a draft handbook to the Tribes by the next quarter. He asked participants to inform EPA, after having received a copy of the handbook, whether it meets the needs of the Tribes.

Mr. Edlund announced that another way to increase communication between EPA and the Tribes was to update EPA's OAR Internet home page on tribal air issues. The home page can be viewed <*www.epa.gov/oar/tribal*>, continued Mr. Edlund. EPA would send a notification letter to the Tribes when the update to the home page has been completed, he added.

Mr. Edlund explained that a number of people had expressed a need for a better description of the types of grants that are issued, the types of grants that are available for private programs, and how such grants fit together. EPA condensed the information into the "Pyramid of Power," which is intended to explain the activities involved in obtaining grants. Self-assessment is the most extensive component of the pyramid because the aim is to provide self-assessment capabilities to all Tribes, he continued. Monitoring can be the result of a self-assessment, he noted, because it helps a Tribe assess a situation. Mr. Edlund explained that an emissions inventory should be developed in the case of a long-term continuous emissions problem. An emissions inventory, he continued, is one step in the pyramid of power. Once an emissions inventory has been developed, the Tribe should develop a strategy for pollution control, which would include modeling. The last step of the pyramid, he said, is the Tribal implementation program. This involves the regulatory activity for air quality, and determines what needs to be documented, he explained.

A participant expressed concern about smaller sources that cause air quality problems, such as car exhaust and dust from roads. Mr. Khatibi stated that programs such as prevention of significant deterioration (PSD) allow Tribes to maintain good air quality conditions and provide monitoring assistance for identifying trends over a period of years. The program, he explained, is a permitting requirement that examines large emissions sources and provides a structure for completing a permit and ensuring there will be no degradation of air quality when facilities are sited in areas in which air quality is good. At first, continued Mr. Edlund, EPA was responsible for the PSD requirements, but the responsibility had been turned over to the states. An individual can represent the Tribes in the area by filing with EPA for the status of public commentor, he pointed out. Once the permit application had been completed and approved, a facility would send the public commentor its permit for review.

Mr. Edlund also referred to the Central States Air Resource Agencies (CenSARA), an organization of air quality programs of states in the central United States. CenSARA, he said, was developing the Central States Regional Air Planning Organization (CenRAP), which is intended to oversee the program for reducing haze and fine particulate matter on a regional basis. CenRAP, noted Mr. Edlund, was inviting tribal participation in the program.

A representative of EPA asked the group whether they had received the 2001 consolidation air training schedule. Many had not received the information; therefore, the EPA staff member said he would forward the schedule to the Tribes. The schedule also is posted on EPA's tribal air Internet home page, he added.

EPA also had identified pollution problems in areas other than densely developed areas, a circumstance that might require funding, continued Mr. Edlund. EPA is committed to helping Tribes receive such money, he said. However, a participant stated that she believed two-thirds of the funding was awarded to the tribal consortium, rather than to individual Tribes. The consortium, she said, was located more than 100 miles from her Tribe's lands; and they might see a representative of the consortium one day of the year. Mr. Edlund then stated that EPA would work with each Tribe to develop an environmental program related to air quality that is suited to that Tribe.

Another issue related to air quality that arose during the session was radon emissions. One Tribe had been told that three quarters of its building was polluted with radon. After calling EPA, the Tribe reported that EPA had informed the Tribe that there was no extra money available to assist in resolving the problem. The Tribe believed that the tribal consortium was receiving the money, but had been unable to help with the radon problem that existed. However, according to representatives of the EPA, the radon program is not widely funded to conduct monitoring activities.

Presentation on Confined Animal Feeding Operations and Wetlands

Ms. Jane Watson, EPA Region 6, discussed confined animal feeding operations (CAFO) from a national and regional regulatory perspective. She first stated that the Clean Water Action Plan (CWAP) prepared in 1998 best describes the national regulatory perspective of EPA. The Animal Feeding Operation (AFO) Strategy of 1999 is an element of the current national agenda developed in response to the CWAP, she said. Currently, only CAFOs are regulated; however, she added, under the new national agenda, AFOs would be regulated, as well. Under the AFO strategy, EPA and the U.S. Department of Agriculture (USDA) are working to produce a model permit that provides a standard format and language for Federal and state agencies to use when writing permits to regulate AFOs. Exhibit 4, on the next page, describes the components of the model permit.

Continuing, Ms. Watson stated that a major impetus to the national agenda is the changing AFO industry. Within the industry, she explained, facilities have grown bigger and integrators have developed; integrators are slaughtering or processing plants that house large numbers of animals for short periods of time, she pointed out. The AFO strategy has responded to the changing industry by requiring owners and operators of AFOs to develop and implement comprehensive nutrient management plans (CNMP), said Ms. Watson. CNMPs describe in detail activities planned for land application of manure and wastewater under the control of an owner or operator of a CAFO. Development of a CNMP forces an owner of a CAFO to calculate the capacity of the operation to handle or dispose of manure and wastewater. Further, waste can be sold only to an operation that has a CNMP, and, upon sale, the CAFO must retain the signature of a representative of the operation, she noted.

Ms. Watson then discussed the status of the general permit for CAFOs. EPA Region 6 had proposed to reissue general permits for CAFOs in nutrient-impaired watersheds and CAFOs in non-impaired watersheds, she continued. The proposed permits include requirements for controlling on-site and off-site land application activities. Further, the proposed permits require that CAFO operators in nutrient-impaired watersheds increase the capacity of their wastewater retention facilities to protect water quality during chronic rainfall events, she continued. EPA Region 6 is revising the previously proposed general permit for CAFOs in response to the AFO strategy and final CAFO permitting guidance and model permit, she noted. She suggested that an informal meeting be held in November 2000 to discuss language and specific items in the permit before formal comment is solicited.

Exhibit 4

MODEL PERMIT AND GUIDANCE FOR CONFINED ANIMAL FEEDING OPERATIONS

The following provides information about EPA's proposed confined animal feeding operation (CAFO) model permit.

- The U.S. Environmental Protection Agency (EPA) issued a draft CAFO permitting guidance and model permit on August 6, 1999.
- Public comments on the draft guidance and model permit were accepted until November 24, 1999.
- The guidance and model permit were developed to assist EPA, states, and Tribes in streamlining CAFO permitting activities and issuing permits to all large facilities that have more than 1,000 animal units by January 2000. Key issues include:
  - *Comprehensive Nutrient Management Plans (CNMP)* detail activities related to land application of manure and wastewater under the control of the owner or operator of a CAFO.
  - Corporate entities that exercise control over CAFO operators are to be co-permitted. Guidance includes a list of factors to be considered in establishing whether corporate entities have control over a CAFO.
  - A 25 year, 24 hour exemption is provided for facilities that claim they do not discharge; such facilities should provide technical documentation that supports the no-discharge claim.
  - Impaired watershed permitting guidance recommends that a watershed general permit may be the most appropriate to issue.
  - On-site land application of manure should be addressed in the CAFO permit; EPA or the state will specify the implementation schedule in the permit in accordance with a CNMP.
  - Off-site land application of manure should be addressed in the CAFO permit; activities should be conducted in accordance with a site-specific CNMP to qualify for the stormwater agricultural exemption.
  - Land application of poultry litter for facilities that improperly apply or manage dry litter will be regulated as CAFOs.
  - Water quality-based limits prohibit discharges of lagoon-stored wastewaters during heavy rainfall events.

Mr. Jim Herrington, EPA Region 6, then moved the subject of the session to wetlands. He began by stating that Section 404 of the CWA provides EPA and the U.S. Army Corps of Engineers (USACE) joint authority to regulate and issue permits for the discharge of dredged or fill materials into the waters of the United States and to issue water quality certifications on tribal lands. Further, the CWA provides funding for wetlands grant programs. Under 33 Code of Federal Regulations (CFR) Section 328.3(b), wetlands are defined as those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Mr. Herrington then noted that Tribes can use the *Corps of Engineers Wetlands Delineation Manual*, published in 1987, to determine whether wetlands are present on tribal lands. He added that wetlands must display hydrophytic vegetation, wetlands hydrology, and hydric soils. He then stated that wetlands are declining because of urban development, the construction of levees, the conduct of agricultural operations, and draining. Finally, Mr. Herrington discussed procedures set forth under Section 404 of the CWA for obtaining permits for discharges into wetlands. Discussing those procedures, he stated that an alternative analysis must be provided to the USACE with an application for a 404 permit. If no alternative analysis is available, he said, the application must demonstrate minimal impacts on a wetland, and compensation must be provided for that unavoidable impact.

Presentation on Fraud Awareness

Ms. Cassandra Todd, a special agent with EPA Region 6 provided a presentation on fraud awareness. Ms. Todd works in the Office of Investigations in the Office of the Inspector General (OIG). Ms. Todd began the presentation by describing how the OIG helps EPA achieve its mission to protect human health and safeguard the environment. The OIG conducts audits and investigations that support prosecutors and lead to indictments and convictions of people found guilty of fraud, she explained. Ms. Todd stated that the OIG is authorized to investigate fraud and abuse by the Inspector General Act of 1978, and that agents are allowed to carry weapons after undergoing special training required by the U.S. Department of Justice. The OIG handles cases that involve official corruption, false statements or claims, program and employment integrity, Federal procurement, and violations of anti-trust laws, she explained. The OIG is divided into four divisions covering the Central, Eastern, Mid-Atlantic, and Western areas of the United States, added Ms. Todd.

Ms. Todd then identified the types of abuse that are considered fraud. Those abuses include false claims, false statements, obstruction of audit, false declaration of bankruptcy, bribery, and kickbacks. Ms. Todd then discussed several types of fraud schemes, which include cost mischarging, product substitution, making false statements and documents, obstruction of Federal audit, “bust-out” schemes, bid rigging, and the purchase of favoritism and insider information.

Ms. Todd then discussed several types of cost mischarging that the OIG had investigated. The first type, which is called cross-charging or labor cost mischarging, occurs when an EPA contractor performs unauthorized work and charges the cost of that work to EPA. The OIG investigates such cases by examining the statement of work written by the contractor, the deliverables, and the timesheets of employees of the contractor. Another type of fraud in the same category is charging for costs that were not incurred. The OIG investigates such cases by searching for documents or invoices that support the charge to EPA. Other types of cost mischarging that OIG investigates include use of artificially inflated rates, charges made for personal and unallowable expenses, and use of ghost employees and shell companies to obtain money from the EPA, she continued.

Ms. Todd also stated that product substitution is another way in which EPA contractors can obtain funds illegally from EPA. In such a situation, she said, a contractor would charge EPA for one type of product and procure another type. Ms. Todd offered as an example of that type of fraud the case of a contractor that charged EPA for new computers, but actually obtained used computers. The company was guilty of fraud, explained Ms. Todd, because it obtained the money that EPA had intended to spend on computers under false pretenses.

Another type of fraud scheme that Ms. Todd described is the use of false statements or documents to obtain additional money from EPA. That category, she said, includes lying to investigators or auditors or using phony documents to support unauthorized charges. If a company lies about rates during negotiation with EPA, the company is in violation of the Truth in Negotiations Act, she pointed out. In addition, said Ms. Todd,

obstructing a Federal audit is another type of fraud that can include destruction or creation of records, denial and use of delaying tactics, or the making of false statements to auditors.

Companies that are guilty of "bust-out" schemes maximize cash flow by not paying subcontractors, waging rates, drawing on credit, and using phony accounts receivables to support loan applications, explained Ms. Todd. The companies, she continued, then falsely file for bankruptcy to avoid the execution of court orders that demand payment of debts.

Bid rigging, which is a conspiracy to set bid prices so that a specific company will win a contract bid, is another illegal and fraudulent scheme, continued Ms. Todd, noting that that type of scheme is a violation of the Sherman Anti-Trust Act. Finally, Ms. Todd stated, that the use of bribery and kickbacks in the illegal purchase of favoritism and insider information is another fraudulent scheme that the OIG investigates.

Ms. Todd then discussed high-tech crime, which, she explained, is not limited to hackers or white collar crime, but includes any crime in which advanced technology is used to commit or advance any type of criminal activity. Ms. Todd gave examples of the types of high-tech crimes, which include:

- Computer-related fraud, such as alteration of data, unauthorized reading of electronic mail, data destruction, sale of proprietary data, penetration by hackers, desktop counterfeiting, extortion of data, and disclosure of confidential data.
- Telecommunications fraud, such as telephone scams.
- Organized crime.
- Computer viruses.
- Cyberterrorism.
- Misuse of the Internet, such as using the Internet for child pornography or gambling.

Finally, Ms. Todd summarized the presentation by stating that the responsibility of the OIG is to conduct audits and investigations when allegations of fraud and abuse have been made. Ms. Todd then invited any member of the audience who had a concern about fraudulent activities to call the OIG.

Videotape on Persistent Organic Pollutants

EPA Region 6 presented the videotape "Drum Beat for Mother Earth," which was produced jointly by the Indigenous Environmental Network (IEN) and GreenPeace. The videotape focused on POPs and their impacts both culturally and physically on indigenous peoples. According to the videotape, POPs are long-lived chlorine-based chemicals that slowly poison humans and other animals by building up residues in the food chain. POPs are found in common places, such as electrical transformers that contain polychlorinated biphenyls (PCB), dioxins, and furans. Other POPs are created during the manufacture of paper and vinyl plastic, which then is used to make children's toys; clothing; intravenous bags and tubing; flooring; pipes; and siding. When vinyl is incinerated or burned in a backyard trash fire, dioxin is formed again. Pesticides containing POPs, such as dichlorododiphenyl/trichloroethane (DDT), no longer are used legally in United States; however, the pesticides still are in common use in other countries.

The videotape also noted that POPs do not easily degrade and can migrate over thousands of miles. Consequently, they can be found in soil, lakes, rivers, fish, animals ,and people long after the chemicals initially are used. Indigenous peoples who maintain a land-based culture are particularly susceptible through their diet because the primary way POPs enter the human body is through the consumption of food contaminated with the chemicals. POPs not only accumulate in the fat of animals, but the concentration of the chemicals increase at each step in the food chain.

Indigenous peoples have special spiritual, cultural, social, and economic relationships with traditional foods (such as fish, sheep, deer, rabbits, reindeer, fowl, and seals) that promote increased consumption of such foods compared to non-Indigenous populations, the videotape continued. However, advisories prohibiting or discouraging the consumption of traditional foods can affect the right of indigenous peoples to practice cultural and spiritual ways. The purchase of commercially prepared foods will not solve the problem, because they too may be contaminated. In addition, when indigenous peoples no longer can eat fish and meat caught in the wild, high protein food often is replaced with "junk" food. The active, social benefits derived from the

harvesting of traditional foods is replaced by a less active lifestyle. The cutting off of traditional food supplies could be considered a form of cultural genocide, the videotape contended.

The videotape described various public health concerns related to contamination by POPs, including exposure to infants and young children through breast milk resulting in learning disabilities and increased susceptibility to cancer; a precipitous rise in breast cancer; and increases in disorders to reproductive organs and the endocrine and immune systems. In addition to alarming trends in human health, the videotape described similar disorders, deformities, and abnormalities in several species of mammals, birds, fish, and reptiles on which Indigenous Peoples depend. Scientists also recognize that POPs can cause health problems in animals that are commonly used to predict risk to humans.

Presentation on Environmental Characterizations

Mr. Ira French, Environmental Director, Wichita and Affiliated Tribes, opened the session by introducing staff members Ms. Nikki Owings-Crumm, Air Coordinator; Mr. Bill Hensley, Water Coordinator; and Ms. Ashley Williams, Water Research Technician. Mr. French distributed copies of the environmental characterization report prepared by the Wichita and Affiliated Tribes. He stated that the report was a deliverable for the Tribe under its GAP grant that was completed in September 1999. Mr. Talee Redcorn, Tribal Consultant, Mr. French continued, had conducted all the data collection required for the report.

Mr. French identified some of the resources drawn upon to prepare the report, including the Natural Resource Conservation Service, EPA, BIA, and the U.S. Geological Survey (USGS), DOI.

Mr. French then summarized the content of the report. He stated that the report had been shared with other Tribes in the region, as EPA had requested. He suggested that the other Tribes use the environmental characterization report as a template for their own characterizations of tribal land. The report, he said, should be used as a guide and to generate ideas.

Mr. Redcorn used a modified environmental assessment (EA) approach in preparing the report, Mr. French added, no certifications were made that the report constitutes an EA. Mr. French stated that Mr. Redcorn had examined various media, primarily by searching the Internet and viewing available publications to collect data for the report. He stated that the report contains maps that show the environmental conditions of the area, and sometimes of the region. Global indexing system (GIS) and ARC View© software, he continued, were used to develop the maps.

The first section of the environmental characterization report, Mr. French explained, addresses air sources. He stated that the first map, Air Sources, shows the unique air sources in the area. The weather stations map, he continued, is a basic map that was taken from an ITEC compact disc. Mr. French stated that all the data used in the project already was available. The next six maps, he continued, present countywide concentrations of NOx, carbon monoxide, particulate matter, ozone, lead, and sulfur dioxide obtained from data from EPA Region 6. The maps show where the pollutants are found with reference to the reservation area, he added. Mr. French also stated that the maps could be used to compare and contrast the entire region with the reservation area. Mr. French stated that it now would be possible to research areas for which there currently is no indication of a problem and determine whether it is indeed accurate to conclude that no problems exist or whether that finding is the result of a lack of data.

Ms. Owings-Crumm stated that the air program began on October 1, 2000 and, over the next 18 months Wichita tribal members in the area would be surveyed to determine their understanding of air quality and air pollutants. A meeting with tribal leaders then will be held, Ms. Owings-Crumm stated, to update the leaders on tribal members' concerns and needs, as revealed by the survey. Continuing, she stated that, if necessary, education on air quality and pollutants would be provided to tribal members, adding that an air assessment data base would be maintained and updated, to support the development of an air quality program.

Mr. French explained that the second section of the environmental characterization report addresses solid waste sites. He stated that the section presents three maps that show the locations of all solid waste sites, including hazardous waste sites, illegal dump sites, and landfills, in the tribal area. Mr. French noted that the section also provides documented information about county rights-of-way. He also stated that the solid waste

program is comparatively new, adding that GAP funds are being focused on that area, in an effort to obtain more information.

The next section of the report, Mr. French continued, addresses drinking-water facilities. He explained that drinking-water districts and facilities were mapped so that issues could be addressed in the future. Currently, he continued, little information is available; however, he suggested, further research might provide data to be used in updating the section.

Mr. French then explained that the next section of the report addresses oil and gas production in the tribal region. He stated that the maps show much activity in the area, noting that such activity causes a problem. Many of the wells, he continued, have been drained and abandoned. Current records, he said, are insufficient; he suggested that authorities conduct walkthroughs to account for all wells.

Mr. French asked Mr. Hensley to comment on the water quality section of the report. Mr. Hensley stated that the water quality assessment conducted for the characterization was based on a watershed approach. Continuing, Mr. Hensley stated that most of the information in the section was obtained from EPA's *Surf Your Watershed Data Base* found at <*www.epa.gov/surf2/hucs/11130302/*>. Mr. Hensley then briefly described the content and import of each map in the water quality section.

Mr. French then stated that the final section of the report presents the findings of a walkthrough investigation of three properties owned by the Wichita Tribe. He explained that Site 1 is a 10-acre tribal trust allotment. Site 1, Site 2, and Site 3 together include more land than the Tribe actually owns, he stated; those sites are included in anticipation of future economical development and expansion purposes, he continued. Mr. French then stated that the walkthrough had been conducted according to the environmental assessment method, except that other Federal agencies had not been contacted formally.

The characterization, Mr. French stated, was developed from data that were both free and publicly available. He also suggested that Tribes might find it necessary to exercise caution when including tribally sensitive data, such as information about sacred areas.

Mr. French stated that a consultant was hired to prepare the report because of the lack of time. He stated that the Tribe had hired Mr. Redcorn because he had the necessary skills, abilities, time, and knowledge to complete the report. Currently, he added, the Tribe has the staff, experience, and direction to keep the project updated. Mr. French then stated his hope that the report will be an effective guide for those interested in conducting an environmental characterization of their tribal regions.

Presentation on Issues Related to Solid Waste and Open Dumps and the Tribal Association

The breakout session began with a presentation by Mr. Edlund. Mr. Edlund began by stating that one of the concerns raised during the previous tribal summit related to the need for more open communication about the identification of the recipients of grants. Mr. Edlund then distributed materials that summarized tribal grant awards under Subtitle C and Subtitle D of the Resource Conservation and Recovery Act (RCRA). The information, he explained, included the name of the Tribe, the project period, and the grant amount for the solid waste and hazardous waste programs. Mr. Edlund explained that the purpose of the grant awards had been to support the development of tribal waste programs and to work with IHS and BIA to end open dumping on tribal land. To reach that objective, he continued, EPA and other government agencies have worked with Tribes to build transfer stations, arrange for direct pickups by contractors, and develop closure and postclosure plans. Mr. Edlund then stated that EPA is able to assist Tribes in creating their grant proposals only by providing technical consultation and resources. Ms. Ann Zimmerman, EPA Region 6, then described a proposal currently published in the *Federal Register*, which was to be released in November of 2000, that will allow Tribes to compete for Federal grants under Subtitle C and Subtitle D. The proposal, she noted, would be posted on the Subtitle C and D Internet home page.

Mr. Earl Hatley, Director of Tribal Environmental Services, Tulsa University, then asked whether programs have been implemented to deal with open roadside dumping on tribal lands. Mr. Edlund answered that some Tribes listed in the handout had received grant money that is being using to stop open roadside dumping, but that EPA does not provide funding for that effort. Mr. Mike Reed, BIA, added that IHS had been assigned that

effort, but had not received funding. BIA, he said, had been making an effort to include the project in its budget. BIA, he added, had requested proposals and was offering funding to be used to clean up such sites. Mr. Hatley then continued, stating that the reason that some dumping occurs on the roadside is that no landfill is available and the Tribes have been unable to obtain funding to construct a landfill or transfer station or to clean up the road side. Mr. Ben Benidal, EPA Region 6, then provided information about the problem that is available on EPA's web site. Mr. Benidal also stated that EPA was to release a document that discusses the development of transfer stations; the document, he added, will be available to Tribes in the near future.

Ms. Janice Stevens, a tribal representative to the Tribal Association for Solid Waste and Emergency Response (TASWER) from the Sac & Fox Nation, provided an update on the activities of TASWER. Ms. Stevens stated that TASWER is a nonprofit organization that had opened offices in Washington, D.C. during the current year. Last year, she continued, representatives were selected from each of the member Tribes of TASWER. TASWER's mission, she said, is to recognize and advocate for the sovereign relationship between all Federally recognized tribal governments and the United States government, with proactive involvement on the part of Tribes in decision-making processes related to solid waste management and emergency response. Ms. Stevens also stated that, in September 2000, TASWER had held its second annual conference in Oklahoma. While there, she noted, representatives were able to tour the Tar Creek Superfund site, which is located on tribal land. The keynote speaker at the conference, she continued, was Mr. Michael Shapiro, Deputy Assistant Administrator, EPA OSWER, who discussed future partnerships between the Tribes. The conference is to be held in New York next year, announced Ms. Stevens; it will be hosted by the Mohawk Tribe, she added.

Ms. Stevens also noted that, in August 2000, TASWER held a RCRA conference in Washington, D.C. that served as a planning session for ensuring that Tribes have the opportunity to comment on modifications to regulations under RCRA, especially in the area of jurisdiction over tribal lands. TASWER currently is funded for two years, said Ms. Stevens and is working to ensure that funding continues for a third year. Further, she said, TASWER currently was undergoing an independent audit. She added, when the audit has been completed TASWER was to seek foundation and private donations. TASWER currently was working on a publication that outlines a method of characterizing waste streams, she continued. The publication would be made available to all Federally recognized Tribes, she noted. In addition, TASWER's Internet home page, <*www.taswer.org*>, provides all the information she had included in her update, she said. Finally, Ms. Stevens stated that membership to TASWER is free; all that is required is a tribal resolution or a letter from a tribal leader, she added.

After the update on TASWER, Mr. Reed asked whether TASWER had received any money from BIA. Ms. Stevens answered that, for the first two years, TASWER was funded solely by EPA; however, she added, TASWER soon would be seeking funding from other agencies, as well as private donations. Mr. Reed also asked whether the waste stream characterization report accounted for all the waste in the community or just the tribal waste. Ms. Stevens answered that all the waste would be characterized.

Mr. Hatley made the last presentation of the session. Mr. Hatley described a three-year project that Tulsa University's Tribal Environmental Services was to conduct with TASWER to identify and set priorities among Superfund sites located on or near tribal lands. The task was to be completed by surveying Tribes, conducting site visits, and placing follow-up telephone calls to Tribes that respond to the survey, he explained. Mr. Hatley added that some of the information requested in the survey could be culturally sensitive; therefore, if a Tribe does not wish that information to be released to other Tribes or to EPA, that information should not be included in the survey. In conjunction with the study, he continued, a culturally based risk assessment guide was to be written to help Tribes identify culturally significant resources and develop consumption rates and use patterns.

When Mr. Hatley had completed his presentation, Mr. Edlund asked whether the survey of tribal customs would be a national-scale effort, expressing concern that the project may encounter problems on a national scale because of the great variability among Tribes. Mr. Hatley responded that the survey asks only about areas of contamination, not about tribal customs. The purpose of the risk assessment guide would be to aid Tribes in planning and conducting risk assessments, he added. Mr. Edlund also asked whether the risk assessment guide would address only human health issues, or whether ecological concerns also would be considered. Mr. Hatley answered that different uses of the land would be considered, but noted that the guide

was to be focused on human health issues. Finally, in response to Mr. Edlund's inquiry about whether EPA would help with the toxicology in the risk assessment guide, Mr. Hatley stated that the project was to be a collaborative effort and that EPA would be involved.

Mr. Juanico (Acoma Pueblo) then asked what action EPA was taking to reduce sources of the solid waste. Mr. Edlund answered that EPA conducts many large-scale programs, such as Energy Star, WasteWise, and Greenlight; under those programs, he continued, EPA provides incentives to industry to reduce waste. Ms. Stevens added that education is a necessary tool to heighten community awareness and reduce sources of waste. Mr. Reed then added that Executive Orders have been issued that require government agencies to reduce their waste streams by 40 percent. He stated that people should be aware of those orders and make sure that Federal agencies follow those orders. Mr. Benidal observed that waste-to-energy programs, which also reduce the amount of solid waste, have been implemented, as well. Finally, Ms. Elizabeth Winter, Pueblo of Taos, offered several suggestions for reducing the waste stream: for example, adding a recycling bin at post offices so that people can recycle junk mail and using the waste disposal facility at Los Alamos to dispose of hazardous tribal waste. In response, Mr. Edlund expressed appreciation for the suggestions and stated that he would keep them in mind for future programs.

Presentation on Underground Storage Tank Program

Mr. Norman Moreno, Underground Storage Tank (UST) Environmental Scientist, AIPC and Mr. David Esparza, GAP Manager, AIPC, led an informal discussion of environmental concerns related to the UST program at EPA. Mr. Moreno began the session with introductions and then opened the floor to questions.

A participant asked when Tribes would be able to obtain funding to support their UST programs. In response, Mr. Moreno referred to a contract he had developed some two years earlier, which was a property agreement between the state of New Mexico and the Tribes of New Mexico that gave the Tribes access to reimbursement of funds at the state level. The contract is a site-specific agreement between the state and Tribe, he explained, but it allows the Tribes greater jurisdiction over their lands. Additional sources of funding for sites in need of remediation include EPA and BIA, Mr. Moreno noted.

Asked about insurance of USTs, Mr. Esparza explained that insurance is available for reimbursement of funds. The reimbursement of funds allow facilities to borrow money to support a remediation or restoration project; however, he noted that the amounts that can be borrowed are stipulated. The owner or operator must pay the first $10,000 in costs for the project, and the facility upgrades must comply with regulatory requirements before monies can be borrowed from the reimbursement of funds, he pointed out. Further, Mr. Esparza stated, the project must be overseen by a certified scientist, which is another stipulation of receiving funds. Revised requirements for reimbursement, added Mr. Esparza, state that only the cost of excavation of the first 1,000 yards of material would be reimbursed.

The discussion brought to light a concern that leaking USTs (LUST) may not be observed and addressed immediately. If the LUSTs are not being found quickly, monthly inventories are not being performed or those inventories are not being performed correctly, noted a participant. Another participant stated that he believed human error plays a significant role in failure to identify LUSTs. With the right measurements and up-to-date records, LUSTs would not pose such a difficult problem, the participant continued. If Tribes would move beyond monthly inventory counts and begin to apply faithful monitoring practices, they would know there is a problem when a spike in parts per million occurs, the participant noted further. Another participant then expressed his belief that employee turnover is a major factor in misinterpreting the information in the records. New employees, he pointed out, will not understand the program. Another participant suggested continual training for new employees and noted that some Tribes have not updated systems from old methods of recording the amounts of materials in their tanks. Computer systems have been put into place to help eliminate any human error that may occur, although state-of-the-art equipment requires a knowledgeable user to be effective.

Mr. Moreno then noted that when the compliance deadline for tanks was reached, more tanks belonging to the BIA than tribal tanks were found to be out of compliance. When tribal lands are leased, Mr. Moreno observed as an aside, endangering the reservation is a breach of the contract under the terms of the lease. BIA, he added, will provide money for the removal of contaminated material.

The Tribal Employment Reservation Laws program, Mr. Moreno continued, assists the Tribe in establishing tribal laws that deal effectively with facilities that operate on reservations. Tribes, as sovereign nations, have the right to choose the contractors that operate on tribal lands. Contractors must submit bids, and a Tribe can accept or deny the contract, he pointed out. The Tribe can enforce a law that states that a certain percentage of the work force for the facility be tribal members, he added.

Continuing, when tanks are to be removed and destroyed, said Mr. Moreno, a closure report and certificate of disposal must be completed for each UST. Further, a brass tank tag that bears the tank's serial number was placed on all USTs installed after 1978. If a tank has no tag, the contractor must complete the certificate of destruction. A tank that has no tag must be labeled for transport, he continued. Removing USTs is a dangerous job, and the people removing them should be well qualified, added Mr. Moreno, noting that EPA ultimately is responsible for removing USTs. EPA can remove a tank only when the owner is unknown, unable, or unwilling, he concluded.

PROCEEDINGS OF OCTOBER 19, 2000

This section summarizes the presentations offered during the session held on October 19, 2000 regarding water quality and the process of awarding grants under EPA's GAP. Ms. Greeney introduced Lieutenant Governor Montoya, Sandia Pueblo, who opened the second day of the summit with a prayer.

Case Study on the Emergency Response to the Los Alamos Wild Fires

Mr. Cooke opened the session by stating that the wild fires that had burned near Los Alamos, New Mexico from May through July 2000, were an example of how tribal, state, and Federal government agencies sometimes will be faced with a common problem, such as a natural disaster, and must find an efficient way to work together. He noted that, in such cases, the Federal government often tries to "fit between" the state and tribal governments, acknowledging, however, that such an approach does not always work well. Mr. Cooke stated his hope that all levels of government would learn from the experience gained during the Los Alamos fires.

Mr. Cooke then introduced Mr. Joseph Chavarria, Pueblo of Santa Clara, who provided an update on emergency response activities during the wild fires on tribal lands of the Pueblo of Santa Clara, which is located near Los Alamos, New Mexico. The fires burned from May 4 though July 7, 2000. During the fires, 7,000 acres of reservation lands were burned.

Mr. Chavarria described the natural resources located on Santa Clara Pueblo, most of which, he said, had been affected by the wild fires. He described the waters that flow in Santa Clara Creek and Turkey Creek, which are located on Santa Clara Pueblo, as the "life and soul" of his people. The water from the creeks has many everyday and cultural uses, he explained. For example, water from the creeks is used to irrigate corn, chili, alfalfa, and other crops. The creeks also support important fish species, such as the native Rio Grande cutthroat trout, he continued. Mr. Chavarria explained that three types of forest ecosystems are located on Santa Clara Pueblo–pinyon-juniper forests, ponderosa pine stands, and mixed pine forests. He stated that the forests provide firewood for use in making pottery and provide important habitat for many species of wildlife, such as the black bear, the mule deer, and the Rocky Mountain bull elk. Further, the fires had burned close to the Puye Cliffs, the ancestral home of his people, said Mr. Chavarria. He stated that a safety zone had been created around Puye Cliffs and that the cliffs had been spared the fire. However, the area was affected by the work of the bulldozers, trucks, and people that had created the safety zone.

Mr. Chavarria briefly described the chain of events that occurred during the Los Alamos fire. He stated that, on May 11, 2000, the residents of Santa Clara Pueblo were ordered to evacuate without the consent of their Governor, which, he noted, had caused alarm. On May 12, 2000, the Governor signed a delegation of authority agreement under which the Pueblo was recognized as a team member having total involvement in the fire suppression efforts. Members of the Santa Clara Pueblo and San Ildefonso Pueblos were included on a cultural advisory team, as well, continued Mr. Chavarria.

Mr. Chavarria said that his Tribe had received daily briefings on the status of the wild fires and events taking place under the emergency response. He stressed that such communication had been crucial. Also important, he stated, was negotiation with tribal leaders before emergency response activities began so that the tribal leaders understand and agree to planned activities and do not feel threatened.

Describing the devastation the fire brought to their land, Mr. Chavarria stated that the "back side" of the reservation had been destroyed. He stated that it was most unfortunate that the fire had occurred during fawning and hatching season for many wildlife species. He said that the soils had become hydrophobic (non-absorbent), a condition that will inhibit regrowth. Runoff and erosion are major problems, washing sediment and debris into drainage areas and creeks, and thereby decreasing water quality, Mr. Chavarria concluded, adding that mudslides during rain storms also are likely.

Panel Discussion on Water Issues Related to Indian Country

Dr. Oscar Ramirez, Deputy Director, Water Quality Protection Division, EPA Region 6, facilitated the panel discussion on water issues related to Indian Country. He introduced Mr. Blake Atkins, Water Quality Protection Division, EPA Region 6, who discussed direct implementation of the Safe Drinking Water Act (SDWA) on tribal lands. His presentation included a review of compliance monitoring requirements and upcoming rules. Pending rules and regulations include (1) the pending radon regulation, (2) the proposed arsenic regulation, (3) the pending groundwater rule, (4) the surface-water treatment rule, and (5) the total coliform rule.

Mr. Atkins stated that, currently, tribal water systems were not experiencing any chemical or radon compliance problems. However, he continued, imposition of the pending radon and arsenic requirements may bring about difficulties in achieving compliance. Commenting on the proposed radon regulation, Mr. Atkins explained that the rule would establish a standard maximum contaminant level (MCL) of 300 picocuries per liter (pCi/L). Because the primary exposure pathway for radon is inhalation, he added, a community that incorporates a multimedia mitigation program to address concerns about indoor air in their public water system can increase the allowable MCL for the system to 4,000 pCi/L.

Commenting on the proposed arsenic regulation, Mr. Atkins stated that EPA had proposed a new public health standard for arsenic in drinking water. He explained that the proposed standard, which currently was under public review, would lower the allowable MCL for drinking water from 50 micrograms per liter (mg/L) to 5 mg/L. He commented that many Tribes in the region had reported arsenic levels in drinking water produced by their community water systems (CWS) of 5 to 20 mg/L. Therefore, he said, adoption of the proposed regulation could bring about difficulties in achieving compliance under the new regulation. Therefore, stated Mr. Atkins, EPA may have to reexamine the MCL established under the regulation.

Continuing, Mr. Atkins explained the monitoring requirements of the proposed total coliform rule. The proposed rule would require a CWS to monitor monthly for total coliform, with additional requirements imposed if fecal coliform is detected in samples of drinking water. In addition, Mr. Atkins stated, the proposed groundwater rule would require that a CWS achieve 99 percent removal or inactivation of viruses before serving the first customer unless (1) the system has had no previous compliance problems with the total coliform rule or (2) a hydrogeologic sensitivity assessment indicates that the source of the drinking water is not susceptible to fecal contamination. Monthly monitoring data that demonstrate that fecal indicators are not present would be required in such cases, he added. Mr. Atkins stated that significant deficiencies identified during sanitation surveys must be corrected within 90 days unless (1) capital improvements are needed or (2) the primary agency determines that a longer time period is necessary.

In closing, Mr. Atkins stated that in the implementation of requirements of the SDWA, enforcement would be used as a last resort. Instead, he stated, in situations of noncompliance, EPA would work with the Tribe to bring their system back into compliance and to improve the quality of the Tribe's drinking water. He stated further that EPA would facilitate the implementation of requirements under the SDWA by (1) supporting analytical services, (2) providing public notice of violations, (3) compiling CCRs, and (4) preparing annual compliance reports. EPA, he continued, also would offer technical assistance through (1) providing technical "circuit riders," (2) facilitating capacity development, and (3) providing training opportunities.

Mr. Dennis Falk, Compliance Assurance and Enforcement Division, EPA Region 6, then explained that in situations of noncompliance, EPA will work with Tribes to develop a site-specific implementation plan for the requirements of the SDWA. Mr. Falk stressed that the SDWA program will provide technical assistance and training. He pointed out that before EPA Compliance Assurance and Enforcement Division becomes involved in a noncompliance situation, a Tribe already would have been provided many opportunities for assistance.

Dr. Ramirez then introduced Mr. Walter Biggins, tribal set-aside program manager, EPA Region 6, who gave a brief presentation on the tribal set-aside program. Mr. Biggins explained that, in 1997, Congress had

appropriated funds for improvements in drinking-water infrastructure. He stated that the program funds are grant funds and that no match is required. In addition, he said, Tribes can apply for low-interest loans under the program to support infrastructure improvements. Mr. Biggins stressed that the set-aside funds are available only for infrastructure improvements in systems that serve Tribes. He noted that 16 of 18 Tribes that applied for set-aside grant funds had received funds.

When a member of the audience asked how much funding had been issued under the tribal set-aside program, Mr. Biggins responded that, from fiscal year (FY) 1997 to FY 1999, funding for the set-aside program totaled $2.94 million; for FY 2000, he continued, funding was $814,000. Another participant commented that many Tribes face multi-million dollar infrastructure needs and asked whether EPA planned to provide those amounts of funds. The questioner added that the Federal government has a trust responsibility to do so. Mr. Biggins responded that funds are available through a loan program and noted that loans can be combined with set-aside grant funds. Mr. Biggins added that it would be possible that other Federal agencies, such as IHS and HUD, enter partnerships to "co-fund" infrastructure projects.

Dr. Ramirez then introduced Ms. Diane Evans, EPA Region 6, who made a presentation on the proposed rule for the implementation of core water quality standards (WQS) in Indian Country. The core WQS would apply in the absence of WQS adopted by a Tribe and approved by EPA. Ms. Evans explained that WQS are required of states and Tribes under the CWA. WQS, she continued, (1) provide quality goals for surface water, (2) provide measures for water quality monitoring and assessment, (3) allow the calculation of permit limits for wastewater treatment plants, and (4) provide the basis for certification under section 401 (that is, §404 permits for dredge or fill activities and NPDES permits). She stated that, under the CWA, "Indian Country" includes (1) tribal trust lands including reservations; (2) dependent Indian communities; and (3) Indian allotments for which a title has not been extinguished (individual or restricted allotments). Ms. Evans stated that 16 Tribes nationwide had adopted WQS that already have been approved by EPA. Continuing, she stated that 10 additional Tribes had submitted WQS to EPA for approval. The remainder of Indian Country has not established legally applicable WQS. Under the proposed rule, core Federal WQS would be established for tribal trust lands and reservations.

Ms. Evans reviewed the steps in the development of the concept of the core WQS, which included discussions at meetings of the TOC and various workshops, the development of a concept paper on core WQS and its dissemination to Tribes in Fall 1999, and meetings held at the Sac & Fox Nation and Santa Ana Pueblo to discuss the concept paper. She noted that more than 60 Tribes nationwide (15 Tribes in Region 6) had provided written comments on the concept paper.

There are two forms of criteria, narrative and numeric, and the draft rule contains narrative criteria. She stated that narrative criteria are descriptive terms used to characterize the goals of the WQS, offering the following example:

> "...Waters shall be free from toxic, radioactive, conventional, non-conventional, deleterious, or other polluting substances in amounts that will prevent attainment of the designated uses specified above..."

Numeric criteria, she explained, establish values for specific pollutants on a case-by-case basis. This draft rule includes (1) an anti-degradation policy to protect existing uses of waterbodies and evaluate the effects of activities on high-quality waters, (2) an evaluation of mixing zones on a case-by-case basis, and (3) a compliance schedule for facilities that require time to construct additional treatment facilities.

Ms. Evans identified the following steps of the implementation process:

- Consult with the Tribe about the appropriate uses and criteria for a specific water body.
- Identify applicable uses and criteria of adjacent states and Tribes.
- Determine which uses should be applied.
- Interpret narrative criteria to protect uses.
- Determine whether a mixing zone or compliance schedule is appropriate.
- Evaluate anti-degradation policy.
- Provide a public comment period on the draft decision through the proposed NPDES permit (or other applicable actions).
- Respond to comments and issue the final permit.

Continuing, Ms. Evans noted that the implementation of core WQS would not prevent Tribes from developing their own WQS at any time. The core WQS would be withdrawn automatically upon EPA's approval of a Tribe's own WQS, she explained. She added that the final WQS also would include an "opt-out" provision for reservations and tribal trust lands that meet certain criteria. Another provision of the proposed rule, she added, is called the "Regional Administrator's Discretionary Approach," under which EPA's Regional Administrator can exclude a Tribe from the rule if, in consultation with the Tribe, he or she determines that the Tribe has a plan for adopting WQS within a reasonable time frame.

Ms. Evans stated that the draft proposal had been submitted to OMB in August 2000 for a 90-day review. Further, she said, EPA had mailed a summary letter to the Tribes that addresses the major issues raised by the Tribes. EPA expects to publish the proposed Core WQS rule in the *Federal Register* in December 2000. She then stated that the draft rule would be sent to all Tribes for review and comment and that the public comment period would be at least 60 days, during which EPA would conduct additional consultation meetings.

A member of the audience asked how the core WQS would be enforced. Ms. Evans stated that EPA has the authority to enforce WQS through permitting actions (NPDES and §404 permits). Nonpoint source pollution is not regulated by EPA and any enforcement actions by Tribes for nonpoint source activities would have to come under tribal authority.

Continuing the discussion on water issues, Mr. Ramirez introduced Mr. Willie Lane, EPA Region 6, who provided an overview of the total maximum daily load (TMDL) program and regulations. Mr. Lane stated that a TMDL is the maximum amount of a pollutant that a water body can receive each day and still meet WQS, and allocates pollutant loadings among point and non-point sources of pollutant. He explained that the states report that more than 40 percent of waters assessed remain too polluted for fishing or swimming, even after water pollution control efforts have been carried out for 28 years. Therefore, he stressed, the TMDL program is a crucial one in achieving healthy watersheds and clean water nationwide.

Mr. Lane explained that, under Section 303(d) of the CWA, states, territories, and authorized Tribes are required to develop lists of impaired waters, or "state 303(d) lists." The law requires that states establish priority rankings for waters on the lists and develop TMDLs for those waters, he said. By law, EPA must approve or disapprove state 303(d) lists and TMDLs. EPA issued regulations in 1985 and 1992 that implement Section 303(d) of the CWA, the TMDL provisions. Exhibit 5 highlights the regulatory history of the TMDL regulations.

While TMDLs have been required by the CWA since 1972, many states and EPA had not developed such limits, Mr. Lane explained. Citizen organizations began bringing legal action against EPA to seek the listing of waters and the development of TMDLs. To date, some 40 legal actions have been brought in 38 states, he said.

Exhibit 5

REGULATORY HISTORY OF TOTAL MAXIMUM DAILY LOAD (TMDL) REGULATIONS

The following describes the history of regulations related to total maximum daily loads (TMDL) under the Clean Water Act (CWA).

1985 TMDL regulations first issued provisions that included non-point sources and load allocations

1992 TMDL regulations revised provisions that called for state lists every two years

1999 Revisions in TMDL and National Pollution Discharge Elimination System (NPDES) regulations were proposed

The final rule on TMDLs was issued on July 13, 1999.

A Congressional rider on military construction and supplemental appropriations bills prohibit the U.S. Environmental Protection Agency (EPA) from implementing the rule.

The TMDL program continues under 1992 regulations and agreements are reached through litigation.

Exhibit 6

1992 TOTAL MAXIMUM DAILY LOAD REGULATIONS

The following provides an overview of the 1992 total maximum daily load (TMDL) regulations promulgated under the Clean Water Act (CWA).

Scope of state lists

- States must include waters impaired or threatened by pollutants.
- The list is composed of waters for which TMDLs are needed.
- At the state's discretion, the water body may remain on the list until the TMDL has been approved or water quality standards have been attained.

Two-year listing cycle

- States are to submit their lists to the U.S. Environmental Protection Agency (EPA) on April 1 in every even-numbered year.

Methodology used to develop the list

- States must consider all existing and readily available information about water quality when developing their lists.
- Monitoring and evaluated data may be used.
- The methodology must be submitted to EPA at the same time as the list is submitted.
- If EPA so requests, states must provide "good cause" for not including a water body on the list or removing one from that list.

Components of a TMDL

- A TMDL is the sum of allowable loads of pollutants set at a level necessary to meet water quality. standards, including allocations of waste loads from point sources and load allocations from non-point sources and natural background conditions.
- A TMDL must consider a margin of safety and seasonal variation.

Priorities and schedule for development of TMDLs

- The state must establish a priority ranking of the listed waterbodies on the basis of the severity of the pollution and the uses to be made of the water.
- The list must identify for each water body of concern the pollutant that is causing impairment.
- States must identify waters targeted for development of TMDLs within the next two years.

Public review and participation

- States must allow the public the opportunity to review the calculations to be used to establish TMDLs.

EPA actions on lists and TMDLs

- EPA has 30 days to approve or disapprove of state lists, priority rankings, and targeting decisions.
- If EPA disapproves, it has 30 days to establish a list or TMDLs, and must seek public comment.

Interpretive guidance issued in 1997 for the TMDL program

- In August of 1997, EPA issued guidance that included a number of recommendations intended to achieve a more nationally consistent approach for developing and implementing TMDLs to attain water quality standards.
- The 1997 guidance recommends that states develop schedules for establishing TMDLs expeditiously, within 8 to 13 years of listing of a water body.
- The 1997 guidance recommends that states describe the plan for implementing load allocations for nonpoint sources, including reasonable assurances that load allocations will be achieved through incentive-based, non-regulatory or regulatory approaches; a participation process; and recognition of other watershed management processes and programs.

Mr. Lane explained that the final rule was published on July 13, 2000; however, Congress had added a "rider" to one of its appropriations bills that prohibits EPA from spending FY 2000 and FY 2001 money to implement the new rule. Therefore, he explained, the current TMDL program operates under the 1992 TMDL provisions. Mr. Lane then provided an overview of the 1992 TMDL regulations, see Exhibit 6 on the previous page.

Continuing, Mr. Lane stated that an objective of the 2000 rule is to establish an effective and flexible framework for moving the country toward the goal of clean water for all Americans. The 2000 TMDL rule also sets forth a process for making decisions about how best to restore polluted water bodies in a common sense, cost-effective way. Exhibit 7 presents an overview of the 2000 TMDL rule.

In summary, said Mr. Lane, the current TMDL program is governed by the 1992 regulations and interpretive guidance because the 2000 TMDL rule cannot be implemented. Consent degrees or settlement agreements would guide TMDL development in many cases, he continued. More information about the TMDL program is available at <*www.epa.gov/owow/tmdl*>.

Exhibit 7

2000 TOTAL MAXIMUM DAILY LOAD RULE

The following provides an overview of the 2000 total maximum daily load (TMDL) rule.

- Provides for a more comprehensive list of impaired waters.
- Lists would be submitted every four years.
- Impaired waters would remain on the list until water quality standards are achieved.
- The public would be notified and have an opportunity to comment on the. methodology, the lists, and the TMDLs
- Would strengthen efforts to put in place cleanup actions that bring about the attainment of water quality standards.
- National Pollutant Discharge Elimination System (NPDES) permits could be revised to be consistent with the TMDL.
- Sets goal of attaining water quality standards within 10 years, if possible.

Dr. Ramirez introduced Ms. Julie Geoffrey, Pueblo of Picuris, who described for the audience the efforts of her Tribe to assist neighboring communities with water quality monitoring and protection. Explaining that her Tribe has an established water quality program and standards, she said that the Pueblo had been approached by many nearby communities to assist them with their water quality problems. She explained that the small, rural communities had not received assistance from the local government authority, so they had turned to the Pueblo. The Picuris Pueblo began assisting the communities in water quality monitoring efforts and in removal of USTs, she said. In doing so, her Tribe had realized that, by helping neighbors protect their water quality, the Pueblo is providing further protection for the waters on its own land.

Continuing, Ms. Geoffrey stated that the Picuris Pueblo acts as a fiscal agent for its neighbor communities and had been able to request and receive additional grant funds from the State legislature for the growing program. She stated that, by working with neighboring communities, her Tribe could focus on protection of the entire watershed. Further, she stressed the need for water quality protection beyond the borders of Indian Country.

Dr. Ramirez thanked Ms. Geoffrey for her presentation and commended her and the Picuris Pueblo for their efforts.

Presentation on the General Assistance Program

Ms. Greeney provided an update on the Indian Environmental GAP. Exhibit 8 provides a general description of GAP.

Exhibit 8

INDIAN ENVIRONMENTAL GENERAL ASSISTANCE PROGRAM (GAP) ACT

The U.S. Environmental Protection Agency (EPA) helps tribal nations build their own capacity to manage environmental programs. A significant means of building capacity is through grants provided under the Indian Environmental General Assistance Program (GAP) Act. The objectives of the GAP Act are to provide funds to Federally-recognized tribal governments to build capacity to administer environmental programs and to provide technical assistance from EPA in the development of multimedia programs. Capacity building activities eligible for funding under GAP include planning, hiring staff, monitoring, and assessing environmental resources and pollution threats. GAP provides Tribes with an opportunity to build a core environmental program and establish priorities related to environmental issues.

Ms. Greeney explained that GAP guidance for allocating funds sets forth basic rules that ensure consistency and provide the best advice for preventing trouble when the program is audited. She added that the final guidance is less flexible than Region 6's interpretation of the interim guidance because the final guidance establishes specific definitions.

Explaining the headquarter allocation formula, Ms. Greeney said that factors in the formula include the number of Federally recognized Tribes, the land mass held by each, and the population of the Tribes. She added that tribal consortia are not included. In EPA Region 6, Ms. Greeney noted, there are 65 Federally recognized Tribes, 4.5 million acres of Indian Country, and a Indian population of almost 400,000.

Pointing out the "gap in GAP," Ms. Greeney stated that funding for FY 2000 totaled $5.6 million, or an average of $86,000 per Tribe (the three consortia located in Region 6 were not included). However, she added, the amount of GAP funds requested by the Tribes and consortia totaled $8.7 million. The largest grant amount requested for FY 2000 was $430,000, and the lowest amount requested was $50,000.

Ms. Greeney briefly reviewed the FY 2000 GAP review process, which she characterized as "gut-wrenching," because the review committee was forced to make an average cut of $35,000 from each grant request. The requests were reviewed by three GAP project officers to evaluate which activities were "GAPable" and which were not. The "GAPable" requests were discussed at length by the Regional Native American Office for Region 6. She stated that review criteria included (1) the substance of the proposal, (2) the type of products and projects, (3) the current performance, (4) the past performance of the Tribe, and (5) the Tribe's fiscal management. Ms. Greeney noted that if a grant request was found to basically be a boilerplate of the Tribe's FY 1999 grant request, it was difficult to defend. She noted that, if a Tribe still maintained a balance in the fund account allocated in FY 1998 or FY 1999, it again was difficult to defend the current GAP request.

Continuing her summary of the FY 2000 GAP review process, Ms. Greeney stated that, in making decisions, the GAP project officers considered how to accommodate new Tribes, how to allow successful programs to grow, how to accommodate pilot programs, and how to maintain existing programs. Ultimately, the project officers also considered how much funding was enough to make a difference for a particular Tribe, she said.

Ms. Greeney then shared the results of the allocation of GAP funds for FY 2000. Of the 65 Federally recognized Tribes, 22 (or 35 percent) received the grant amount requested plus or minus $5,000 and 29 Tribes (or 47 percent) received the grant amount requested plus or minus $10,000. GAP funds also were allocated to fund two 2-year work plans and the first PPG in EPA Region 6.

Ms. Greeney informed the audience that $1.1 million in residual or carryover funds from nine grant awards allocated in FY 1998 were not used by the Tribes to which they had been awarded. She stated that those grants had been closed and the funds automatically reverted to EPA headquarters, where they will be

"reprogrammed" to EPA Region 6. She stressed that such "reprogramming" of unused funds to the regions is not a high priority for EPA headquarters because of other more pressing fiscal work. Ms. Greeney then stated that, in addition to the existence of residual and carryover funds, the failure by many Tribes to effectively make quarterly withdrawals left $2 million in unused grant funds. Ms. Greeney stressed that the failure of Tribes to use the full amounts of their grant funds hampers the ability of Region 6 to advocate for more grant funds. She then noted that other Tribes could have used the funds. As a solution, she stated, only $35,000 was awarded to Tribes that did not use the full amount of their grant funds in previous years. She explained that EPA Region 6 will hold over $600,000 until (1) the previous work is completed, (2) the balance aligns with projections and allocated funds, and (3) it is determined that the new work proposed still is needed.

In closing, Ms. Greeney discussed the future of EPA's regional tribal program. She predicted a slight increase in funding and more multiyear grant awards. However, she anticipated more reporting requirements, more audits, and more demand for accountability. Therefore, she stated, the Tribes are challenged to maximize effectiveness in the use of existing funds. Ms. Greeney added that she expected that more PPGs will be awarded.

Responding to a question from the audience about whether a Tribe could use GAP funds to prepare CCRs, Ms. Greeney stated that CCRs do not fall under the definition of implementation presented in the GAP guidance for FY 2000.

Referring to the leftover balances in grant funds allocated in FY 1998, a participant commented that most Tribes are "spread thin" and do not have separate departments to manage the funds. Ms. Greeney responded that, while EPA Region 6 may understand many of the reasons for leftover balances, good fiscal management is an important responsibility and reviewers see only statistics during a audit.

Another participant asked whether a GAP training workshop would be held in FY 2000. Ms. Greeney responded that a training workshop was planned in 2001. She stated that the training session most likely would be a one-day workshop for tribal accounting staff and a one-day workshop during which general grant training would be provided.

A member of the audience commented on a hypothetical situation in which a Tribe performs an environmental study and detects a health risk or danger, but cannot use GAP funds to mitigate the problem. Ms. Greeney responded that an ATSDR community assessment could add weight to a request for other grants in such a situation. She also encouraged the participant to seek the support of the TOC under such circumstances.

Concurrent Breakout Sessions

This section presents highlights of the breakout sessions that were held concurrently on October 19, 2000.

Presentation on Consumer Confidence Reports

Mr. Atkins discussed CCRs that are required under the 1996 amendments to SDWA. He first stated that CCRs are the centerpiece of the public right-to-know element emphasized in the 1996 SDWA amendments. Continuing, he stated that CCRs are a means by which consumers can make informed decisions about their drinking water. Further, he added, CCRs are a means of raising consumers' awareness of the process by which safe drinking water is delivered, sources of drinking water, and the importance of protecting source water. Mr. Atkins then stated that CCRs also are a tool to be used to encourage dialogue between consumers and their utilities and to provide a starting point for consumers in their efforts to obtain information.

Mr. Atkins then discussed key dates under the rule. First, an existing CWS was required to mail or otherwise directly deliver a copy of the CCR to its customers by October 19, 1999; subsequent reports must be mailed by July 1 each year thereafter. Second, Mr. Atkins continued, the CWS must provide a copy of the CCR to EPA by the due date for the report. Further, a certification must be provided to EPA within 3 months of the due date of the report. The certification, he explained, verifies that the CWS distributed the CCR to its customers and, in preparing the CCR, used data that were correct and consistent with compliance monitoring data previously submitted to EPA. New CWSs were required to deliver their CCR by July 1 after the first full calender year of operation and by July 1 annually thereafter, he reported. New CWSs must deliver the first

certification by October 1 after the first full calendar year of operation and by October 1 annually thereafter, he added.

Mr. Atkins then discussed the eight items that must be included in the CCR: (1) information about the water system; (2) information about the source of the water; (3) definitions; (4) reporting of the levels at which any contaminants were detected; (5) information about cryptosporidium, radon, and other contaminants; (6) required additional health information; (7) information about violations of the National Primary Drinking Water Regulation; and (8) information about any variance or exemption under which the system is operating.

Mr. Atkins then discussed the reporting and record-keeping requirements governing CWSs. First, he explained that the CWS must deliver the CCR to its customers and show a "good-faith" effort to deliver to non-bill- paying consumers. Second, Mr. Atkins continued, the CWS must deliver the CCR and certification to the appropriate government agencies. Next, the CWS must make the report available to the public, he said. A system that serves fewer than 10,000 persons, he noted, must obtain a mailing waiver. Finally, Mr. Atkins stated, the CWS must keep copies of the CCR on file.

Mr. Atkins then discussed compliance with CCR requirements by Tribes. The Pueblo of Tesuque is the only Tribe that completed the CCR process in both 1998 and 1999, he said. Through late 1998, he continued, 17 Tribes in New Mexico and 1 Tribe in Texas had completed the CCR process. Through late 1999, he added, 14 Tribes in New Mexico and 1 Tribe in Texas had completed the CCR process. Four Tribes in New Mexico did not complete the CCR process in either year, he noted.

Presentation on Issues Related to Brownfields

The presentation on issues related to brownfields began with an overview on ITEC given by Mr. Wayne Isaacs, Cherokee Nation of Oklahoma. Mr. Isaacs began by outlining the background of ITEC. He stated that ITEC had been formed in 1992 through an MOU between 20 Tribes and EPA Region 6. Since that time, he continued, 14 additional Tribes had joined ITEC. Mr. Isaacs then discussed several ITEC programs, which include addressing issues related to solid waste, clean air, USTs, GAP, brownfields, and Superfund remediation. Mr. Isaacs then stated that ITEC was to provide a number of environmental training courses for Native Americans; the courses, he said, would help trainees develop basic life skills, literacy skills, and the job skills necessary to compete in the environmental field. ITEC, he continued, also would assist the trainees through job placement services.

Mr. Isaacs then began to describe funding opportunities that are available to Native Americans, such as EPA's Brownfield Demonstration Assessment Pilot program, the Superfund Redevelopment Initiative Pilot Program, and the Environmental Education Grant Program. Mr. Isaacs also discussed sources of funding outside EPA, such as HUD, USDA, and the Administration for Native Americans. Finally, Mr. Isaacs distributed copies of a proposal that the Cherokee Nation had used to obtain grant money to support brownfields redevelopment. Mr. Isaacs recommended that Tribes use the proposal as a guide for future pilot project proposals and made some recommendations for improving proposals. He suggested, for example, that Tribes identify some sites and make plans for those sites before submitting the proposal, and that the Tribes demonstrate in the proposal that support is available from other organizations.

Ms. Dorothy Crawford, EPA Region 6 Brownfields Team, began her presentation by defining the term brownfields. Exhibit 9 provides the definition. Ms. Crawford then pointed out that brownfields are not necessarily contaminated, and that sometimes, after an initial assessment, the properties are found to be clean. On the other hand, she noted, contamination at some brownfields properties approach levels found at Superfund sites. However, Ms. Crawford stated, regardless of the level of contamination, when the properties have been cleaned up, EPA accomplishes its mission and communities benefit from the redevelopment.

Exhibit 9

DEFINITION OF A BROWNFIELDS

The U.S. Environmental Protection Agency (EPA) defines a brownfield as abandoned, idled, or under-used industrial and commercial facilities where expansion or redevelopment is complicated by real or perceived environmental contamination.

Ms. Crawford then discussed EPA's Brownfields Economic Redevelopment Initiative's pilot program for assessing properties and the steps that should be taken to obtain funding for brownfields properties. Ms. Crawford stated that, after a property has been identified, the contamination should be assessed. EPA offers pilot grants to develop local programs to assess such properties, she noted. Grants, in the amount of $200,000, should be used to hire staff to perform the site assessment, she continued. Exhibit 10 describes EPA's Brownfields Assessment Demonstration Pilots. In addition, Ms. Crawford suggested that communities take advantage of targeted brownfields assessments, where EPA or the state assesses the property free of charge if the site meets certain criteria. If the site is found to be contaminated, a revolving loan program maintained by EPA can provide funds for remediation, she said. In addition, HUD and other Federal agencies provide funding to remediate brownfields properties, she added. Finally, Ms. Crawford urged anyone writing a proposal to use the Region 6 staff as a resource, whether the proposal is related to a project included in a pilot study or not.

Exhibit 10

BROWNFIELDS ASSESSMENT
DEMONSTRATION PILOT PROGRAM

As a part of the U.S. Environmental Protection Agency's (EPA) Brownfields Economic Redevelopment Initiative, the Brownfields Assessment Demonstration Pilots are designed to empower states, communities, Tribes, and other stakeholders in economic redevelopment to work together in a timely manner to prevent, assess, and safely cleanup brownfields to promote their sustainable reuse. EPA has awarded cooperative agreements to states, cities, towns, counties, and Tribes for demonstration pilots that test brownfields assessment models and facilitate coordinated public and private efforts at the Federal, state, tribal and local levels. To date, the Agency has funded 362 Brownfields Assessment Pilots.

The brownfields assessment pilots (each funded up to $200,000 over two years) test assessment models and facilitate coordinated assessment and cleanup efforts at the Federal, state, tribal, and local levels. These funds are used to bring together community groups, investors, lenders, developers, and other affected parties to address site assessment and cleanup planning issues.

In response to a question posed by Mr. Juanico about liability issues related to brownfields properties, Ms. Crawford stated that EPA supports state programs that provide extensive release from liability to brownfields developers and that EPA also will provide to developers of brownfields properties "comfort letters."

After Ms. Crawford's presentation, Mr. Myron Knudson, Director, Superfund Division, EPA Region 6, offered comments on comfort letters. Comfort letters, he said, are issued at the recommendation of the state. He then provided a brief review of the history of EPA's Brownfields Economic Redevelopment Initiative. He stated that the Brownfields initiative is a Clinton administration initiative; it has the support of 22 Federal agencies, he added. Mr. Knudson then encouraged all interested parties to use EPA Region 6 and ITEC as resources when seeking funding for brownfields redevelopment.

Mr. Juanico then asked whether EPA would consider waiving liability for Tribes. Mr. Isaacs answered that Tribes may be able to use insurance underwriters, who are now writing policies that protect entities from liability related to brownfields properties. Mr. Reed then asked whether funds from the revolving loan fund are available to Tribes. Mr. Knudson responded that, because the revolving loan fund was available only to those who have been in the pilot program for several years, it was not likely that Tribes would be able to obtain funding from that source. Mr. Shije then asked whether a tribal consortium could apply for a grant for its brownfields program. Ms. Crawford answered that, as long as the consortium meets certain criteria, it most likely would be able to apply for a grant.

Session on the U.S. EPA Region 6 Regional Tribal Operations Committee

Governor Bowekaty opened the session on the RTOC by asking for questions from the audience. Ms. Greeney joined Governor Bowekaty in moderating the session.

A participant asked for information about the communications grant listed in the agenda for the session. Governor Bowekaty stated that the purpose of the proposed communications grant would pay for a contractor to record and distribute the minutes of meetings of the RTOC, maintain a mailing list, send meeting and other announcements, and perform similar tasks, rather than assigning such matters to members of the RTOC. He stated that the Cherokee Nation holds a grant awarded using EPA headquarters funds set aside for the establishment of the RTOC in EPA Region 6, and could issue a request for proposal. Governor Bowekaty welcomed comments and suggestions for defining the task of the outside contractor.

A member of the audience asked how much money would be needed annually to support the RTOC. Ms. Greeney stated that until a track record was established, she was estimating that $65,000 would be required each year.

A member of the audience asked whether, under a GAP grant, Tribes could commit one full-time staff person to RTOC to perform the tasks under discussion. Ms. Greeney responded that the grant funds allocated to the Cherokee Nation for the establishment of the RTOC would cover meetings of the RTOC through September 2001. She explained that no more funds can be requested from EPA headquarters. After September 2001, she said, EPA Region 6 will attempt to fund the RTOC with GAP grants or under the EPA Regional Administrator's (RA) discretionary fund. However, she stressed, there would be much competition for the RA monies. Continuing, Ms. Greeney stated that Tribes can use GAP grants only for capacity-building. She suggested that the argument that RTOC serves to build the capacity of all Tribes might provide justification for the use of GAP funds to support the committee. However, she added, consensus among the Tribes in the region would be necessary before additional GAP funds were awarded for this purpose.

A representative of a New Mexico Tribe expressed concern that the use of GAP funds to pay for outside support would take funds away from the Tribes. He stated that, while the New Mexico Tribes generally support the use of a contractor for the RTOC meetings, many Tribes do not support the use of GAP grant funds for that purpose. He also expressed concern that the issue of funds must be addressed each year, observing that the issue of funding could affect the stability of the RTOC. The participant then proposed that each of the 65 regional Tribes donate $1,000 of individual grant funds to support the activities of the RTOC. Ms. Greeney stated that, while the move proposed was possible, it would be much easier administratively for EPA and the tribal governments to take the funds from the total GAP funding available for a given year and distribute the remaining grant funds among the Tribes.

Members of the audience offered several other suggestions for funding support for meetings of the RTOC. One participant suggested than, rather than use a contractor, the tasks under discussion could be delegated to selected tribal administrative staff. In response, a member of the audience pointed out that the terms of member Tribes end in September which does not coincide with the spring-time negotiations for GAP funding. It was suggested that the RTOC advising committee be assigned to address the issue and Governor Bowekaty agreed. He then reiterated that any decision would require the consensus before it could be implemented.

Referring to the representation of tribal Governors on the RTOC, a member of the audience commented that EPA seems to recognize a Tribe's Governor as the tribal leader, although the terms of most Governors are only one year and most Tribes have higher positions than that of Governor. Ms. Greeney responded that EPA did not designate that the tribal Governors represent the RTOC member, but the votes and comments of the Tribes brought that circumstance.

In closing, Governor Bowekaty stated that, if the RTOC is not found to be a useful forum, the Tribes could disband it. However, he said, he believed that the RTOC would prove to be useful. He asked that the Tribes bear with the consensus building, stressing that the RTOC had not yet begun its work. He stressed that the RTOC could be a forum for building the capacity of all Tribes.

Presentation on the Toxic Release Inventory

Dr. Warren Layne, EPA Region 6, led the session on the toxic release inventory (TRI) data base. Dr. Layne opened the session by explaining that TRI was established in 1986 because of an accident in India in which thousands of people were killed. Methylisocyanate, a very deadly chemical, was released from a plant during the accident, he explained. Until that time, he noted that industries could release chemicals into the air without public reporting.

During the same time, several accidents occurred in the United States. In response, Congress passed the Emergency Planning and Community Right-to-Know Act. Sections 301 to 303 of the act deal with local and tribal emergency planning committees and emergency notification of releases, he continued. Dr. Layne then explained that sections 311 and 312 deal with hazardous chemical inventories. The hazardous chemicals can cause bodily harm or may be flammable, said Dr. Layne. Continuing, he stated that section 313 includes toxic chemicals that can cause increases in an individual's health problems affecting breathing and thinking, and other bodily functions. The section deals strictly with facilities that release chemicals, he noted.

Since 1986, he continued, facilities have been required to report chemicals released during the previous year. July 1, he stated, is the deadline for reporting the releases. The report is published for public review and maintained in the EPA library, he said. Dr. Layne noted that the report identifies those facilities that are releasing chemicals to the air, land, and water. Dr. Layne also explained the report includes the attempts the facilities are taking to reduce pollution. The TRI Internet homepage is <*www.epa.gov/tri*>, said Dr. Layne, noting that the information is reported in pounds per year.

Most medium and large manufacturing facilities in the country are covered by TRI reporting requirements, continued Dr. Layne. Recently, he said, several additional industries have been brought under the requirements, including coal mining, generation of electricity, petroleum bulk storage, wholesale chemical storage facilities, metal mining facilities, and RCRA type C hazardous waste facilities.

Continuing, Dr. Layne explained that, under the TRI, air is considered in two categories: (1) fugitive emissions and (2) stack emissions. Fugitive emissions, which include leaks and emissions from pipe connections, are the releases that cannot be controlled, he said. Stack emissions are releases that are deliberate. A facility cannot release more stack emissions than are allowed under its permit, he pointed out.

The TRI inventory has 22 categories, continued Dr. Layne, including organic chemicals, metals, and polycyclic aromatic hydrocarbons. There are 600 chemicals on the list, he added. The listing of several of those chemicals has been challenged over the years, he continued. However, he noted, if a chemical of low toxicity is produced in large amounts, or if a very toxic chemical is produced in small amounts, that chemical is on the list. A facility may be listed because it exceeds reporting thresholds for number of employees (10), imports, manufactures or processes more than 25,000 pounds of a listed toxic chemical per year, or otherwise uses 10,000 pounds of a listed toxic chemical, Dr. Layne pointed out.

The state of Texas has the largest number of releases for all media (air, water, and land), both on and off site, said Dr. Layne, but, he noted, that state ranks fifth for on-site releases. Texas, he noted, had shown the greatest improvement in controlling releases.

If it appears information has been misreported or data do not appear to be accurate, a facility is inspected, continued Dr. Layne. Three criteria, he said, determine whether a facility is required to report emissions under TRI: (1) whether the facility manufactures, imports, or otherwise uses listed chemicals, (2) whether the facility's emissions are above the threshold limit, and (3) whether the facility employs 10 or more people.

Dr. Layne developed a ratio between the maximum amount of a given chemical on-site and compared it with the size of the site. The ratio plotted gave an average for fugitive releases of the chemical xylene. If a facility is reporting zero or "NA," then this helps EPA determine that the facility is not reporting correct numbers.

Continuing, Dr. Layne explained that a wind rose map is a display of the direction the wind blows during a specific percentage of time. If the wind blows to the north the majority of the time, concentrations of chemicals could accumulate and exist at unhealthy levels north of a facility, he pointed out. Such a circumstance could

cause contamination from a facility to affect residences at distances of 20 miles or more by collecting in that area. For example, a facility in New Mexico caused the occurrence of dioxin in the breast milk of women in Alaska because the wind blows north the majority of the time, said Dr. Layne.

Dr. Layne noted that another web site available to the public, <*www.epa.gov/pbt*>, provides information about toxins such as mercury and dioxins that demonstrate persistent bioaccumulation.

In conclusion, Dr. Layne explained that because of the reporting criteria, the TRI captures only seven percent of the total chemicals released in the United States. The TRI deals only with toxic chemicals and does not include hazardous chemicals, he noted, as well.

Presentation on Little Moccasins (Lead Poisoning [Pb] Prevention)

Mr. Jeffrey Robinson, Regional Lead-Based Paint Program Coordinator, EPA Region 6, opened the session by introducing himself; Ms. Eva Steele, Lead-Based Paint Program, EPA Region 6; and Mr. Brian Burgess, Lead-Based Paint Program, EPA Region 6.

Mr. Robinson stated that the Little Moccasins program was developed by the Houlton Band of Maliseet Indians through a Lead Awareness Program grant from EPA Region 1. It is a lead poisoning prevention program, he continued, for tribal day-care centers and families. He stated that a manual and a videotape are available to those interested in the program; both can be obtained from Mr. Philip Quint, Lead Director, Houlton Band of Maliseet Indians.

The videotape focused primarily on communicating the dangers of lead poisoning and demonstrating how to prevent it. According to the videotape, hundreds of thousands of American children of all ethnic backgrounds suffer lead poisoning each year. Children living in older houses that are not well maintained, and who might not have well-balanced diets, are most likely to fall victim to lead poisoning. Lead is a toxic metal that can cause permanent damage to children, usually brain damage, added Mr. Robinson.

The videotape described how lead can enter the body when an individual breathes in fine lead particles present in the air. Usually, children absorb lead into the body by eating contaminated paint, soil, or dust. Young children ingest more lead than older individuals, because they come into contact with lead-contaminated dust or soil more often than older children or adults. For example, the videotape stated, young children crawl and play on the floor, which might have lead dust on it, or they play in the dirt, which may be contaminated.

Very low levels of lead contamination can cause anemia, hearing loss, and kidney damage and can interfere with a child's growth, the videotape continued. Since the brain continues developing until the age of six, young children, as well as unborn children, are most vulnerable to lead poisoning.

The videotape also noted that it is very difficult to know whether a child has been exposed to lead. Screening is the only way to determine whether a child has been exposed to lead. The screening process involves taking a small amount of blood from a child's finger or arm and measuring the amount of lead present. The videotape recommended that a child be screened annually from the age of six months to six years. According to the video, the most important times to screen a child are at the ages of one and two.

Lead poisoning is preventable, the videotape continued. The key to prevention is to identify the sources of lead contamination and learn how to control them. Most cases of lead poisoning are caused by the ingestion of lead-based paint and inhalation of lead dust. Lead-based paint might be present in any home built before 1978 or painted with paint manufactured before 1978. The videotape then indicated that, when a home is sold or rented, the owner is required by law to notify the purchaser or leasee that lead-based paint is present in the home.

The videotape then described three ways to test the paint in a house for lead. First, paint chips can be collected carefully and sent to a laboratory for analysis. As an alternative, a certified inspector can measure the lead in the home with an x-ray fluorescence machine. A third alternative is testing with a do-it-yourself kit

available from the hardware stores. That third method is not as accurate or precise as the others, according to the video, but it is less expensive.

The videotape then described two ways to temporarily reduce a child's exposure to lead-based paint: covering areas of peeling paint with tape or contact paper and blocking access to such areas with furniture. Another way to temporarily reduce a child's exposure to lead dust is regular wet-mopping of baseboards, floors, and other horizontal surfaces. Removal of the paint is the only permanent solution, as the videotape emphasized.

The videotape noted that adults who work in environments in which lead is present, can bring lead dust into the home on their bodies, hair, and clothing, including shoes. Working closely with ammunition; glass; solder; insecticides; batteries; plastics, paint; printing materials; plumbing fixtures; ceramics; stained glass and jewelry-making materials; construction, repair, or demolition equipment; auto mechanics or auto body work supplies; or electronic components or cables may expose individuals to hazardous amounts of lead. The videotape suggested that lead-contaminated clothing and shoes be removed before such an individual enters.

Lead dust in the home should be cleaned by a wet, rather than a dry, method, the videotape explained. Dry methods, like dusting and vacuuming, merely move the dust particles around and do not remove them. The videotape recommended that a high-efficiency particle arresting vacuum cleaner be used to safely clean carpets in the home.

Teaching children to wash their hands after playing outdoors and before eating and sleeping is one of the best ways to prevent harm caused by lead-contaminated dust and soils, the videotape counseled.

The videotape described some ways in which lead can contaminate drinking water, including municipal plumbing systems, drinking fountains, or old kettles or urns that are lined with lead or assembled with solder. The longer the water sits in the pipes, the more lead it absorbs. A water-filtering device specifically labeled as effective in removing 95 percent of the lead present in water and approved by the National Sanitation Foundation, can help protect a child from contaminated water, the videotape pointed out.

When ceramics are not fired at high temperatures, the videotape continued, lead in the glaze can contaminate food served or stored in those ceramic vessels. The videotape advised that old or homemade ceramics, or ceramics purchased outside the United States, should not be used to store or serve food or beverages.

The videotape identified a number of products that contain lead that children may come into contact with. Ammunition, fishing weights, imported mini-blinds, children's raincoats, backpacks, and hundreds of plastic toys are just a few of those products.

The videotape concluded by noting that the Little Moccasins manual provides a variety of activities that help young children learn about lead poisoning and its prevention, including art activities, science activities, a felt-board story, and cooking activities.

At the end of the presentation, Mr. Robinson stated that the videotape is excellent tool for educating parents and children. He stated that the program is available at no cost to anyone who wishes implement a lead poisoning prevention program for his or her Tribe. Those interested, he said, could contact Mr. Quint at 1 (800) 545-8524.

Closing Remarks

Ms. Greeney thanked all the speakers, tribal members, and representatives of Federal agencies for participating in the summit. Mr. Keith Bluecloud, Kickapoo Tribe of Oklahoma, then closed then meeting with a prayer and led the audience in visualization.